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**IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION**

In Equity. No. 690

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREENE, and Tucker Savage, as and Constituting Florida Railroad Commission, Petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT

To the Honorable Judges of the District Court of the United States in and for the Northern District of Georgia:

The State of Florida, by Cary D. Landis, its Attorney General, and Eugene S. Matthews, Mamie Eaton-Greene and Tucker Savage, as and constituting Florida Railroad Commission, by T. T. Turnbull, Special Counsel for said Florida Railroad Commission, bring this their bill of complaint against the United States of America and Interstate Commerce Commission, and thereupon respectfully show as follows:

1

That the petitioners, Eugene S. Matthews, Mamie Eaton-Greene and Tucker Savage are the duly elected, qualified and acting Railroad Commissioners of the State of Florida; that as and constituting such Florida Railroad [fol. 5] Commission they are, under the constitution and laws of the State of Florida, charged with the duty and authority of supervising, regulating and enforcing rates and charges for transportation service performed by railroads as common carriers in intrastate commerce in the State of Florida, and are authorized and empowered to bring and maintain this proceeding.

2

That the United States of America is made defendant herein by virtue of those certain acts of Congress known as the Commerce Court Act (36 Stat. L. 539), and the District Court Jurisdiction Act (38 Stat. L. 219). The defendant Interstate Commerce Commission is an administrative tribunal created by Act of Congress, February 4, 1887, and whose duties and powers are defined in such act and amendments thereto and supplements thereof.

3

That the Georgia Public Service Commission is an administrative tribunal created and existing by authority of law under the constitution and statutes of the State of Georgia, having its official residence in the City of Atlanta in the northern District of Georgia, and so within the jurisdiction of this Court.

4

That the Atlantic Coast Line Railroad Company at all times herein mentioned has owned and operated various lines of railway in the States of Georgia and Florida. That for the transportation of logs, over six feet in length and other than walnut, cherry and cedar logs, within the State of Florida the Atlantic Coast Line Railroad Company [fol. 6] voluntarily established in the year A. D. 1914, and thereafter voluntarily continued in effect and now charges a certain mileage scale of rates known as the "Cummer Scale", which, for varying distances up to 170 miles, provided varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the Railroad's right of way."

That under the laws of Florida said Cummer Scale became and was and still is the legal and lawful rate for the transportation of such logs in intrastate commerce within the State of Florida, and that no change ever could or now can be made in said rate without a hearing duly had after notice duly given to all interested parties by said Florida Railroad Commission and the consent of said Florida Railroad Commission duly given after such hearing in the manner prescribed by the laws of the State of Florida.

That over such lines of railway the Atlantic Coast Line Railroad for many years prior to February 8, 1928, transported for shipment wholly within the State of Florida under said Cummer Scale of rates vast numbers of carloads of logs.

5

That for many years prior to February 8, 1928, said Atlantic Coast Line Railroad Company had also published and filed with the Interstate Commerce Commission and continued in effect certain rates which would be applicable to any movement of such logs, viz, logs over six feet in length and other than walnut, cherry and cedar logs, over its lines from Florida origins to Georgia destinations, which said rates were higher in amount for like distances than the so-called "Cummer Scale" applicable for the like dis-
[fol. 7] tances and under the certain conditions between points in the State of Florida as above described.

That there never was any movement of such logs under said interstate rates, nor was there ever any movement of such logs after February 8, 1928, under the new interstate rates then established for such traffic (in the event there should be any such traffic), by the order of the Interstate Commerce Commission as is hereinafter set forth.

6

On or about to-wit, May 3, 1926, said Georgia Public Service Commission, in its own name, filed with the Interstate Commerce Commission a certain complaint against the Atlantic Coast Line Railroad Company. In such complaint it was alleged that the rates of freight on logs published by the Atlantic Coast Line Railroad as applicable to shipments of such commodity from origins on its line in Florida to destinations on its line in Georgia then were and thereafter would be unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act. It was further alleged in such complaint that the contemporaneous publication of such interstate and intrastate rates above described constituted and thereafter would constitute undue prejudice and disadvantage to Georgia Lumber Manufacturers and Georgia communities and unjust discrimination against interstate commerce to the undue preference and advantage of shippers of logs

between points in Florida, in violation of the provisions of Sections 3 and 13 of the interstate commerce act.

7

Thereupon such complaint was served by the Interstate Commerce Commission upon the Atlantic Coast Line Railroad Company, which, thereafter, and in due course, filed with the Interstate Commerce Commission its answer [fol. 8] thereto and in such answer that railroad denied that there was or had been any violation on its part of the interstate commerce act, and demanded that "it be hence dismissed."

8

That the Interstate Commerce Commission in compliance with Section 13 (3) of the Interstate Commerce Act, notified the State of Florida and the Florida Railroad Commission of the pendency of such proceeding before it, and that said Florida Railroad Commission upon the hearing and argument of the cause before said Interstate Commerce Commission appeared in defense of its jurisdiction of intrastate rates and of its power and authority with respect thereto.

9

That certain parties filed interventions, some in support of and some in opposition to the complaint, in said proceeding, said proceeding being known as "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, Interstate Commerce Commission Docket #18364", and such interventions were received and allowed in behalf of divers of said parties, including among other Brooks-Scanlon Corporation, Cummer Cypress Company and Wilson Cypress Company. That said last named interveners, with others, all of whom were shippers of logs in Florida, filed their interventions aforesaid in opposition to so much of said complaint of said Georgia Public Service Commission as alleged any violation of Sections 3 and 13 of the interstate Commerce act by the respondent Atlantic Coast Line Railroad Company. But each and every order permitting such intervention expressly provided that the permission to intervene therein granted should not be construed to allow the intervener to introduce evidence which would unduly broaden the issues raised in the complaint.

[fol. 9] Thereupon public hearings were had by said Interstate Commerce Commission in said proceeding, at which hearings evidence was introduced by said Georgia Public Service Commission, said Atlantic Coast Line Railroad and divers interveners who had intervened in support of the complaint. At the conclusion of such evidence the interveners, including those above named, who had intervened in opposition to the complaint submitted and filed a motion to dismiss the proceeding in entirety on the ground that there was a total insufficiency of evidence in any way or remotely tending to sustain any allegation in the complaint or sufficient to constitute a cause of action within the power of the Interstate Commerce Commission. Said motion was taken under advisement and the hearings proceeded. Thereupon the petitioners here, the above named interveners, and the other intervening shipper defendants referred to, without waiving their motion to dismiss, submitted a substantial amount of evidence, which was received and allowed and made a part of the record in said proceedings.

That in the course of said proceeding the complainant, Georgia Public Service Commission, averred that the end sought to be achieved under the complaint was the extension of the then effective intrastate Florida log rates (Cummer Scale) interstate into Georgia and took the position of record that the proceeding was "not a revenue case." In the production of its evidence the defendant Atlantic Coast Line Railroad disclaimed any contention that the then effective intrastate Florida log rates (Cummer Scale) were not compensatory, and stated as its position of record that it had not made and was not making any proposal to revise those intrastate rates.

[fol. 10] That thereafter said Interstate Commerce Commerce in its report and order hereinafter mentioned denied the aforesaid motion to dismiss said proceeding.

11

That thereafter on, to-wit, August 2, 1928, Division 4 of said Interstate Commerce Commission rendered its report and order in said proceeding.

That in and by such report and order it was found and concluded by said Division 4 of said Interstate Commerce Commission that the interstate rates on logs published by the Atlantic Coast Line Railroad Company to Georgia des-

tinations on its lines from Florida origins on its lines north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs for distances not exceeding 170 miles were, and would be, unjust and unreasonable to the extent that they exceeded, or might exceed, a distance scale of rates therein prescribed, which rates said Division 4 found were and would be reasonable, and which rates said Atlantic Coast Line Railroad Company was required to establish on or before October 10, 1928.

That in and by such report the Florida intrastate rates (Cummer Scale) were found to result "in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce", and in and by said order said Atlantic Coast Line Railroad Company was required to establish carload rates for logs (except walnut, cherry and cedar) in intrastate commerce "within the State of Florida" which should be the same as the rates prescribed by the Interstate Commerce Commission as reasonable for trans- [fol. 11] portation in interstate commerce from points in the northern portion of Florida to destinations in Georgia.

12

That after the rendition of said report and order the effective date thereof was by subsequent orders of said Division 4 of said Interstate Commerce Commission extended to February 8, 1929, and said order was on February 5, 1929, amended so as that it should not be applicable to logs of the tariff description involved less than six feet in length.

13

That on, to-wit, the 27th day of November, 1928, your petitioners filed in this Honorable Court their bill of complaint against the defendants, United States of America and Interstate Commerce Commission, wherein and whereby your petitioners sought to annul, set aside and enjoin that portion of the aforesaid order of the Interstate Commerce Commission wherein and whereby said Interstate Commerce Commission attempted to require said Atlantic Coast Line Railroad Company to establish, put in force and

maintain rates for the transportation of logs in intrastate commerce within the State of Florida which should be the same as those prescribed by said Interstate Commerce Commission as reasonable for transportation in interstate commerce, for distances not exceeding 170 miles, from points in the State of Florida, north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations in the State of Georgia. That answers were filed by the defendants to said bill of complaint, and Georgia Public Service Commission was permitted to intervene and file its answer thereto.

That at the same time your petitioners filed their afore-[fol. 12] mentioned bill of complaint; two other bills of complaint seeking similar relief were filed in this Honorable Court against the same defendants, one by the Wilson Lumber Company of Florida and the other by Brooks-Scanlon Corporation, the Wilson Cypress Company and the Cummer Cypress Company.

14

That said three suits were consolidated and heard before a court of three judges as required by the applicable statute.

That this Court in its opinion, construed the order of the Interstate Commerce Commission in so far as it was applicable to intrastate rates in Florida as being limited to points of origin on the Atlantic Coast Line Railroad in the northern part of Florida, as the Interstate Commerce Commission had confined its order to those points of origin in fixing interstate rates, and this Court, in the course of its opinion, stated that a construction that the order complained of fixed intrastate rates for the whole of Florida "would probably nullify the order". That thereupon this Court sustained said order upon this narrower construction and decrees were entered on, to-wit, January 17, 1929, in said three suits dismissing the bills.

15

That thereafter on, to-wit, February 7th, 1929, effective February 8th, 1929, said Interstate Commerce Commission, without notice to your petitioners and without any investigation or proceeding whatsoever, amended its order with respect to intrastate rates, "for the purpose of clarification" by substituting for the phrase "within the State of

Florida" the words, "within and throughout the entire State of Florida, without exception".

[fol. 13] 16

That petitions for rehearing and for leave to file supplemental bills in said three suits were then presented to this Court and were granted, and said supplemental bills were filed.

That answers were filed by the United States of America to said supplemental bills of complaint and Atlantic Coast Line Railroad Company was permitted to intervene and file its answers to said supplemental bills.

That on the 17th day of April, 1929, after the rehearing, orders were entered dismissing both the original and supplemental bills of complaint and denying the relief prayed in each of said three suits.

That this Court upheld the amended order of the Interstate Commerce Commission solely upon the ground that the order was aimed at a discrimination "against general interstate commerce", caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier.

That the aforesaid suit brought by your petitioners as aforesaid, including the pleadings, evidence, orders and decrees therein, appears of record in this Court and reference thereto is hereby prayed and the same is in its entirety made a part hereof by reference as though the same were set forth herein in haec verbae.

17

That thereafter said three cases were duly appealed to the Supreme Court of the United States and an opinion rendered therein by said Supreme Court of the United States on, to-wit, the 5th day of January, A. D. 1931, wherein said Supreme Court decided that the portion of the order of the Interstate Commerce Commission with [fol. 14] respect to intrastate rates (being the portion of said order under review in said three suits) was not supported by the findings of the Interstate Commerce Commission, and that that part of the order must be set aside. That the decrees of this Court were accordingly reversed.

18

That thereafter the mandates of the Supreme Court of the United States reversing the decrees of this Court having been produced in each of said cases, this Honorable Court on, to-wit, March 7th, 1931, entered in each of said three suits its order adjudging that all parts of the said order of the Interstate Commerce Commission which prescribed or attempted to prescribe rates for the transportation of logs in intrastate commerce in the State of Florida on the lines of the Atlantic Coast Line Railroad Company were invalid and unlawful, and such parts of said order of the Interstate Commerce Commission were thereby enjoined, set aside and annulled.

19

That at or about the time of the last mentioned order of this Court, said Georgia Public Service Commission and said Atlantic Coast Line Railroad Company filed with said Interstate Commerce Commission simultaneously motions to reopen said proceeding, viz, the proceeding described as "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, Interstate Commerce Commission Docket #18364".

That the motion of the Georgia Public Service Commission recited the filing of its original complaint, the issuance of the order of the Interstate Commerce Commission, the attack upon that order in the courts, and the reversal of the judgment of this Court by the Supreme Court. The Motion quotes that portion of the opinion of the Supreme [fol. 15] Court which declares the basic or essential findings required to support the order of the Interstate Commerce Commission to be lacking and which declares that if the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates, the Interstate Commerce Commission is still at liberty to make such determinations as the situation may require. The motion then requests the Interstate Commerce Commission to reopen the proceedings and to make the determinations required by the situation and to issue such report and to make such findings and orders, "as will result in removing the discriminations set out in the original petition". The motion prays that the Commission make such

findings and issue such orders as it may deem requisite or necessary "to fully accomplish the purposes of the original petition and of this motion", and that the Interstate Commerce Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from all points in Florida to all destinations in Georgia and that the measure of such rates be no higher than the rates concurrently in effect for the same kind of property moving in intrastate commerce in the State of Florida.

That the motion of the Atlantic Coast Line Railroad Company recited the filing of the original complaint by Georgia Public Service Commission before the Interstate Commerce Commission, the order entered by the Interstate Commerce Commission, and the decisions of this Court and of the Supreme Court upon the attack upon the order of the Interstate Commerce Commission, and quoted the same portion of the opinion of the Supreme Court which had been quoted in the motion of the Georgia Public Service Commission to reopen the proceedings. This motion likewise averred that the Florida Railroad Commission was undertaking to enforce the Cummer Scale, and that petitions had been filed in this Court in the three suits pending in this Court above mentioned asking for an order directing restitution to be made by said Atlantic Coast Line Railroad Company to the lumber companies and shippers in the State of Florida on account of shipments of logs made after February 8, 1929, such restitution to be based upon the difference between the Cummer Scale of rates and the scale of rates prescribed by the Interstate Commerce Commission. And said motion averred that the sums whereof restitution was requested as aforesaid were in excess of $200,000.00. Said motion prayed the following relief:

[fol. 16]

"(a) * * * that this Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary;

"(b) That this Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond said 170 miles, as may be lawful.

"(c) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper."

That neither of said motions asserted in issuable form, or indeed asserted at all, that the level of the Florida intrastate rates were so low as to constitute a revenue burden either upon interstate commerce or upon the general revenues of the carrier.

20

That your petitioners filed with said Interstate Commerce Commission a reply to said motions requesting that said motions be denied, and averring the readiness and willingness of the Florida Railroad Commission at any proper time upon the application of the Atlantic Coast Line [fol. 17] Railroad Company or anyone interested to consider and hear and to determine after notice and hearing as prescribed by Florida Law the level of the Florida intrastate rate. Said reply likewise averred that the Supreme Court had found that the authority to determine the reasonableness per se of said intrastate rate lay with the State authorities and not with the Interstate Commerce Commission and that until such State authority had been invoked with respect to the level of that rate, Federal authority ought not to be exercised even if there were power to exercise it, which power was expressly denied.

That on, to-wit, April 6, 1931, said Interstate Commerce Commission made an order reopening said proceeding for further hearing and assigning said proceeding for further hearing at Jacksonville, Florida.

21

That further hearing was had in the reopened proceeding at Jacksonville, Florida, on, to-wit, June 10th to 12th, 1931 and an additional further hearing was had in said proceeding at Washington, D. C. on, to-wit, July 20th and 21st, 1931. That at the very outset of these hearings and before any witnesses were called and sworn, the State of Florida asserted of record; that the Interstate Commerce Commission had no jurisdiction in that proceeding to prescribe intrastate rates on logs in Florida; that the authority to determine the reasonableness of those rates lay with the Florida Railroad Commission; that those rates had been

voluntarily initiated more than fifteen years theretofore and when established had become the lawful State rates; that the laws of Florida prohibited any change or increase of those rates without consent and approval of the Florida Railroad Commission after due notice to the interested par- [fol. 18] ties and a hearing; that no complaint had ever been made to the Florida Railroad Commission about the level of that rate, although its doors all that time had been open to anyone dissatisfied with that rate; that the result of the proceedings before the Interstate Commerce Commission had been to injure and destroy intrastate commerce within the State of Florida, and to injure and destroy industries and whole communities in Florida without benefiting anyone in Georgia or in Florida; and that the Florida Railroad Commission considered that the Interstate Commerce Commission was without power to invade the domain of the State in this matter, but if it had such power it should not exercise it until the railroad company had applied to the State of Florida for such relief as it might deem itself entitled to have. That your petitioners have ever since maintained and still maintain the position so asserted.

That evidence was taken and received at said hearings and said hearings concluded by said Interstate Commerce Commission, acting through the Examiner assigned by it to conduct said hearings.

22

That the complainant Georgia Public Service Commission offered no evidence whatever to prove any revenue burden on interstate commerce caused by the application of the Florida intrastate scale of rates (Cummer Scale), and thereupon, the Examiner having ruled that the issue of undue burden upon interstate commerce was involved in the proceeding, a motion was made by the interveners to dismiss that portion of the complaint which under such ruling was construed as alleging that said Florida intra- [fol. 19] state scale of rates unduly burdened interstate commerce. That the Examiner ruled that he had no authority to dismiss the complaint and thereupon the defendant was permitted to introduce evidence designed to prove affirmatively this allegation of the complaint made against the defendant. That said motion to dismiss was insisted

upon before the Interstate Commerce Commission and denied by it in its report and order of July 5th, 1932 hereinafter referred to.

23

That on, to-wit, May 14th, 1931, and prior to the first hearing in said reopened proceeding, your petitioners and the intervening shipper defendants therein made written demand upon the Atlantic Coast Line Railroad Company that it produce at said first hearing a statement of the number of cars, total tonnage and charges applicable thereto covering the transportation of logs of the tariff description involved in said proceeding, moving in intrastate commerce in Florida during the following periods:

February 1, 1926 to January 31, 1927;
February 1, 1927 to January 31, 1928;
February 1, 1928 to January 31, 1929;
February 1, 1929 to January 31, 1930;
February 1, 1930 to January 31, 1931.

That a similar statement as to such logs moving in interstate commerce from Florida to Georgia during the same periods was included within the same demand. That said written demand likewise requested a statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs of the tariff description involved in said proceeding, interstate as well as intrastate, over all or any parts of its railroad lines wherever [fol. 20] situate during the years ending respectively January 31, 1927, January 31, 1928, January 31, 1929, January 31, 1930, January 31, 1931. That likewise in said written demand it was stated that if it was not practicable to furnish the data last mentioned except by calendar years, that then that data be furnished for the calender years 1926, 1927, 1928, 1929, and 1930. That copy of said written demand was furnished to the Interstate Commerce Commission and the Georgia Public Service Commission.

That the information so demanded was never furnished nor was any part of it ever furnished, save and except that said Atlantic Coast Line Railroad Company furnished a statement showing the number of cars, total tonnage and charges applicable to the transportation of such logs within the State of Florida for the period beginning February 9,

1929 and ending January 31, 1931, viz, the period of the effectiveness of the order of the Interstate Commerce Commission, without said statement being divided in any way into any other periods of time, and save and except that upon said demand being insisted upon in the course of the proceedings the Atlantic Coast Line Railroad Company admitted of record that there had been no interstate movement of such logs from Florida to Georgia "except possibly an occasional car load".

[fol. 21] That the Atlantic Coast Line Railroad Company refused to furnish the information so demanded and your petitioners and said intervening shipper defendants in due course moved said Interstate Commerce Commission to require said Atlantic Coast Line Railroad Company to produce the data so demanded as aforesaid for use in said proceeding. That said Interstate Commerce Commission refused to require said Atlantic Coast Line Railroad Company to furnish said information or any of it. That in the course of said proceeding formal motion was made that said Interstate Commerce Commission require said Atlantic Coast Line Railroad Company to furnish information showing the number of cars of logs transported by it intrastate in Florida during the years 1926, 1927 and 1928, and the revenue received by it for such transportation. That said Interstate Commerce Commission by its order made on, to-wit, July 7th, 1931, denied said motion.

That all of said information so demanded and sought [fol. 22] to be required, save and except to the limited extent hereinabove stated, has never been furnished or produced in said proceeding and the data and information so demanded and sought is not in evidence in said proceeding.

That there is no evidence in said proceeding anywhere showing the amount of revenue which had been derived by the Atlantic Coast Line Railroad Company from the Florida intrastate traffic in logs of the tariff description involved in said proceeding under the Florida intrastate rates (Cummer Scale).

24

That after said hearings and on or about December 12th, 1931, certain Examiners of the Interstate Commerce Commission to whom said proceeding had been assigned did

file, submit and serve upon all interested parties a report in which it was proposed that the Interstate Commerce Commission should find: that the interstate rates previously prescribed and then in effect were not unreasonable; that the Florida intrastate rates were not shown to be unduly prejudicial to Georgia shippers and localities engaged in interstate commerce in the State of Georgia; but that the Florida intrastate rates (Cummer scale) were and for the future would be unjustly discriminatory against interstate commerce, and that such discrimination should be removed by the establishment of a special rate from Hines, Florida, to Palatka, Florida, of not less than 5.5¢ per hundred pounds, minimum 50,000 pounds, and by the establishment of intrastate rates between all other points on the Atlantic Coast Line Railroad in Florida which should be the same as the intrastate rates previously prescribed in the report and order of August 2nd, 1928, of the Interstate Commerce Commission.

[fol. 23] That said report quoted from the opinion of the Supreme Court the following language which was used in striking down the former order of the Interstate Commerce Commission:

"The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

That said Examiners being apparently unable to make these basic and essential findings, and thereby tacitly admitting that the evidence did not support such findings, averred that the Supreme Court's statement as to the absence of those findings "was made as a suggestion of what might have been appropriate findings to support the conclusion", and averred, "These suggested findings were merely illustrative; there is nothing in the opinion that would warrant the conclusion that such findings, and no other, were essential preliminary findings of fact".

That the proposed report accordingly did not propose that the Interstate Commerce Commission should make

those findings, the absence of which caused the Supreme Court to condemn the former order, and the evidence is not and was never present upon which those findings could be made.

25

That thereafter exceptions were filed to said proposed report by your petitioners and certain of the intervening shipper defendants, and in due course the proceeding came on to be orally argued on, to-wit, February 3rd, 1932, before the entire Interstate Commerce Commission at Washington, D. C. At such argument there appeared counsel [fol. 24] for said Georgia Public Service Commission, for said Atlantic Coast Line Railroad Company, for your petitioners, and for said intervening shipper defendants.

26

That thereafter on July 5, 1932, said Interstate Commerce Commission rendered its certain report and order in said proceeding, a copy of said report and order being hereto attached and marked "Exhibit A" and made by reference a part hereof.

In that report the Interstate Commerce Commission found that the interstate rates from Florida to Georgia prescribed by its former order of August 2, 1928, and thereafter continuously in effect were reasonable. The report recited that in the original hearing it had been shown that there was no actual movement of logs from Florida to Georgia, and that during the period of more than two years from February 8, 1929, to about April 10, 1931, when the interstate rates from Florida to Georgia and the Florida intrastate rates were on a parity there was no movement from Florida to Georgia, except possibly an occasional carload. The report recites that it is impossible to say whether a movement from Florida to Georgia will develop in the future and that, since the Florida intrastate rates are by the new order again being put on a parity with the interstate rates, no finding in reference to undue prejudice against persons and localities in interstate commerce was necessary and the report expressly declines to make any finding in that regard. Your petitioners aver that there has never been any evidence of the movement of even a single carload of logs from Florida

to Georgia, whether the rates were on a parity or not, and no evidence upon which it could be assumed that there will ever be such a movement. Your petitioners further [fol. 25] aver that the interstate rates from Florida to Georgia theretofore prescribed and thereafter and now in effect were only applicable from points in nothern Florida to points in Georgia as has been hereinabove set forth.

That said report of said Interstate Commerce Commission further found that the Florida intrastate rates involved in the proceeding were, and for the future would be unjustly discriminatory against interstate commerce, and that such unjust discrimination could and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates which should be not less than the same rates previously prescribed by the order of August 2, 1928, for the intrastate transportation of logs in Florida. And your petitioners aver that said finding was made, notwithstanding the fact that said Interstate Commerce Commission failed to make the findings which the Supreme Court had declared to be essential to justify the invasion of the domain of the State of Florida, and in lieu thereof had attempted to substitute for such findings doubtful, ambiguous and indefinite conjectures none of which have been made to clearly appear or to appear at all by the evidence, and notwithstanding the fact that it had not been made to clearly appear or to appear at all by the evidence that the jurisdictional findings prescribed by the Supreme Court could be made, and notwithstanding the fact that the findings which the Commission purported to make were not supported by the evidence.

27

That the order accompanying said report (without any effective date being fixed therefor), directed that the Atlantic Coast Line Railroad Company cease and desist from practicing the discrimination found in the report to exist [fol. 26] in the relation of intrastate and interstate rates and to establish rates on logs in intrastate commerce "within and throughout the State of Florida" for distances of 170 miles or less which should be the same as

those rates theretofore prescribed in the order of August 2, 1928, as aforesaid, for the transportation of logs in intrastate commerce in Florida and in interstate commerce from points in northern Florida to points in Georgia.

28

That thereafter on, to-wit, July 28, 1932, without notice or hearing, said Interstate Commerce Commission made its order amending its report and order of July 5, 1932, and therein ordered that the effective date thereof shall be "on or before September 15, 1932". That a copy of said order of July 28, 1932, is hereto attached and marked "Exhibit B" and made by reference a part hereof.

29

That your petitioners filed on, to-wit, August 24, 1932, with said Interstate Commerce Commission their petition for reargument and reconsideration of said report and order, and said petition was denied on, to-wit, August 25th, 1932. That Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company and Wilson Lumber Company of Florida, being certain of the intervening shipper defendants above referred to, likewise filed with said Interstate Commerce Commission their petition for reargument and reconsideration of said report and order, and said Interstate Commerce Commission has denied said petition. That on or about August 10, 1932, said last named intervening shipper defendants filed with said Interstate [fol. 27] Commerce Commission their motion to postpone the effective date of the final order outstanding in said proceeding and said motion has been denied.

30

Wherefore, having exhausted their administrative remedies, your petitioners herein respectfully institute this proceeding for the purpose of annulling, vacating and setting aside said report and order of July 5, 1932, as amended as aforesaid, of said Interstate Commerce Commission, and to enjoin the enforcement thereof.

31

And your petitioners aver that said report and order, as amended as aforesaid, are arbitrary and unreasonable, be-

yond the power of the Interstate Commerce Commission and wholly invalid and unlawful.

32

That said report and order, as amended as aforesaid, are unlawful for the following several reasons, among others:

(I) Because under the facts of record in said proceeding before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise of or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by said order.

(II) Because the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission have [fol. 28] not been made and cannot be made by the Interstate Commerce Commission upon the evidence that was before it in said proceeding.

(III) Because the basic essential and jurisdictional facts necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the said report or findings of the Interstate Commerce Commission.

(IV) Because the basic essential and jurisdictional facts necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the evidence before said Commission.

(V) Because the findings of fact upon which the Interstate Commerce Commission relied to justify its order prescribing intrastate rates were not warranted and/or made to clearly appear by the evidence before said Commission.

(VI) Because said Interstate Commerce Commission made no finding supported by evidence of the essential facts as to the Florida intrastate traffic in logs and the revenue therefrom, and as to the effect of the intrastate rates both as existing and prescribed, upon the income of the said Atlantic Coast Line Railroad Company, which

would justify the conclusion that said order was needed to avoid an undue burden on the revenues of said carrier and a consequent interference with the maintenance of an adequate transportation service.

(VII) Because the Interstate Commerce Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

[fol. 29] (VIII) Because it did not and does not clear- appear that the evidence warranted a finding of the amount of revenue which had been derived in the past by said Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (Cummer Scale).

(IX) Because the Interstate Commerce Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission has ordered established.

(X) Because it did not and does not clearly appear that the evidence warranted a finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission ordered established.

(XI) Because the Interstate Commerce Commission made no finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(XII) Because it did not and does not clearly appear that the evidence warranted a finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

[fol. 30] (XIII) Because the Interstate Commerce Commission made no finding that an undue burden upon the

carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(XIV) Because it did not and does not clearly appear that the evidence warranted a finding that any undue burden upon the carrier's revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(XV) Because the Interstate Commerce Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and made no finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(XVI) Because it did not and does not clearly appear that the evidence warranted a finding that the alteration of the intrastate rates would produce, or was likely to produce, an additional and greater amount of income and it did not and does not clearly appear that the evidence warranted a finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

[fol. 31] (XVII) Because the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(XVIII) Because it did not and does not clearly appear that the evidence warranted a finding of the quantity or extent of any burden upon the interstate revenues of the

carrier caused by the application of the existing Florida intrastate rate.

(XIX) Because the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court of the United States has declared lies with the state authority and not with the Interstate Commerce Commission.

(XX) Because no complaint was made and no evidence offered by the complainant Georgia Public Service Commission, of a revenue burden upon interstate commerce.

(XXI) Because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceeding before it any case or controversy of such character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

(XXII) Because the same are not appropriate to the case and not just to the parties to be affected, they were not made following the forms of law, nor were they adapted to the end sought to be attained in said proceeding before said Interstate Commerce Commission.

[fol. 32] (XXIII) Because in making the same the Interstate Commerce Commission considered and gave effect to rate comparisons.

(XXIV) Because in making the same the Interstate Commerce Commission considered and gave effect to statements of system revenue returns, and to the relation of log traffic and log revenue to total traffic and total revenue.

(XXV) Because in making the same the Interstate Commerce Commission considered and gave effect to system average costs.

(XXVI) Because in making the same the Interstate Commerce Commission considered and gave effect to cost studies and other matters which were incompetent and insufficient to furnish the basis for any such report and order.

(XXVII) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of out-of-pocket costs of transportation wherein there were included charges to operating expenses not authorized by the Classification of Operating Revenues and Operating Expenses of Steam Roads as prescribed by the Interstate Commerce Commission.

(XXVIII) Because in making the same the Interstate Commerce Commission considered and gave effect to its own cost study, Appendix E of said report, which was formulated from matter dehors the record, without submitting the same in evidence and without affording an opportunity to cross examine the author thereof and to offer evidence in rebuttal thereof and thereby deprived the State of Florida and its Railroad Commission of the full and fair hearing to which they are entitled by the Act.

(XXIX) Because your petitioners were not afforded a fair opportunity to be heard respecting the justice of the same.

[fol. 33] (XXX) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of transportation costs which charged to the costs of Florida intrastate log transportation the full statutory return of five and three-quarters per cent while contemporaneously the return actually earned by the carrier was far less.

(XXXI) Because the rates prescribed therein to be applicable to Florida intrastate log transportation are far in excess of all demonstrated costs, taxes, and the full statutory return of five and three-quarters per cent, and are extortionate.

(XXXII) Because said Interstate Commerce Commission failed to require the Atlantic Coast Line Railroad to first apply to the Florida Railroad Commission for alteration of the Florida intrastate rates.

(XXXIII) Because said order fails to duly designate a lawful date upon which the same shall become effective.

(XXXIV) Because said Interstate Commerce Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have

been prescribed and in which no general investigation of rate levels whether on interstate or on intrastate traffic has been made.

(XXXV) Because the intrastate rates prescribed in said proceedings before the Interstate Commerce Commission are broader in their scope than the interstate rates prescribed in said proceeding, and are beyond the scope of the issues raised in said proceeding.

(XXXVI) Because it did not and does not clearly appear in said proceeding before the Interstate Commerce Commission that there was or is any unjust discrimination against interstate commerce in violation of Section 13 of the interstate commerce act.

[fol. 34] (XXXVII) Because in said proceeding the Interstate Commerce Commission did not find any facts sufficient to constitute an unjust discrimination against interstate commerce in violation of Section 13 of the interstate commerce act.

(XXXVIII) Because said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further that the said Interstate Commerce Commission was and is without jurisdiction to enter its said order.

(XXXIX) Because said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

33

That at all times herein mentioned there were and have been situate in proximity to the railroad lines of said Atlantic Coast Line Railroad Company in the State of Florida many millions of feet of standing and uncut timber, the capital value of which aggregated and now aggregates many millions of dollars.

That at the time of the filing of said complaint by said Georgia Public Service Commission, viz., May 3, 1926,

many persons and corporations were engaged in cutting said timber and transporting the logs so produced over the aforesaid lines of the Atlantic Coast Line Railroad Company a distance of 170 miles or less to lumber mills located in the State of Florida. That more than 5,000 men were then employed in said logging and lumbering operations.

[fol. 35] That the effect of the former order of the Interstate Commerce Commission was to very considerably increase the intrastate transportation charges for the transportation of such logs and to render it highly unprofitable to said shippers of logs to continue to use said transportation service. That by reason of said order and its being sustained by this Court large and valuable mill properties were dismantled and abandoned and operations discontinued, involving a loss of many millions of dollars to the owners thereof and a large number of citizens of the State of Florida were thrown out of employment and existing industries and communities located in the State of Florida and forming a substantial part of the taxable value thereof were destroyed. That for the same reason the great volume of then existing intrastate commerce in logs in the State of Florida on said Atlantic Coast Line Railroad Company was largely destroyed.

That if said order of July 5, 1932 of said Interstate Commerce Commission becomes effective similar, though not so momentous effects will result, (the number and consequence of the lumber mills to be affected having been vastly diminished by the effectiveness of the former order as aforesaid), and mill properties will be abandoned by reason thereof and unemployment will be increased and the taxable value of property will be diminished or destroyed in the State of Florida. That the damage which will be so occasioned will be irreparable and cannot be compensated for or adequately redressed by any suit or suits at law and your petitioners have no plain, adequate and complete remedy at law available to them in the premises.

[fol. 36] 34

And your petitioners allege that the authority of the State of Florida acting in its sovereign capacity over its own intrastate rates was at all times and is paramount

and superior to Federal authority with respect to said rates until and unless said State authority actually conflicts with the Federal authority to regulate interstate commerce, and that the Interstate Commerce Commission is without the statutory power to invade the domain of the State of Florida in derogation of said State authority until and unless it shall be made to clearly appear from lawful evidence that the jurisdictional facts exist which warrant the Interstate Commerce Commission in invading said domain of the State of Florida; that whether or not such jurisdictional facts exist and have been made to clearly appear from lawful evidence is a judicial question which this Court under the Constitution of the United States (and in particular under Section 1 of Article III thereof, and the Tenth Amendment thereof, of which your petitioners claim the benefit and protection), is bound to determine for itself in this cause according to the established forms of law, anything in the Interstate Commerce Act as amended to the contrary notwithstanding. That your petitioners are entitled to a trial de novo upon such jurisdictional facts by this Court and hereby make demand for such trial.

Wherefore, your petitioners respectfully pray as follows:

A. That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and of this bill of complaint in the manner prescribed by statute in such cases made and provided.

[fol. 37] B. That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and are null and void and that said report and order, as amended, be set aside and annulled.

B1. That this Court will allow a temporary stay or suspension of the operation of the said order of the Interstate Commerce Commission pending the application for the injunctions herein sought.

C. That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the en-

forcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

D. That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission, and permanently enjoining the enforcement thereof.

E. That your petitioners may have such other and further relief in the premises as to this Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

The State of Florida, by Doyle E. Carlton, Governor. Eugene S. Matthews, Mamie Eaton Greene, Tucker Savage, as and Constituting the Railroad Commissioners of the State of Florida. Cary D. Landis, Attorney General of the State of Florida; Theo. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Petitioners.

[fol. 38] *Duly sworn to by Eugene S. Matthews. Jurat omitted in printing.*

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[fol. 39] EXHIBIT "A" TO BILL OF COMPLAINT

Interstate Commerce Commission

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted February 3, 1932. Decided July 5, 1932

On Further Hearing, Following Florida v. United States, 282 U. S. 194

1. Finding in original report, 146 I. C. C. 717, that rates on logs over six feet in length, except walnut, cherry,

and cedar, in carloads, from points in northern Florida to destinations in Georgia for distances of 170 miles and less were unreasonable, affirmed. Present rates found reasonable.

2. Rates on logs over six feet in length, except walnut, cherry and cedar, in carloads, applying on shipments between points on the Atlantic Coast Line Railroad Company in Florida for distances of 170 miles and less found unjustly discriminatory against interstate commerce. Nondiscriminatory basis of rates prescribed.

E. M. Price for complainant.

Frank W. Gwathmey, Carl H. Davis, Robert C. Alston and E. W. Moise for defendant.

Cary D. Landis, Attorney General for the State of Florida, and T. T. Turnbull for Florida Railroad Commission.

H. P. Adair, C. G. Ashby, C. E. Cotterill and August G. Gutheim for Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company; J. V. Norman for Wilson Lumber Company; T. M. True for Southern Cypress Manufacturers Association; Thomas D. Guthrie and Russell W. Bennett for various crate manufacturers and E. C. Green for Jacksonville Traffic Bureau, Interveners.

## Report of the Commission on Further Hearing

MEYER, Commissioner:

In the original report herein, 146 I. C. C. 717, division 4 found that the interstate rates on logs, except walnut, cherry and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter called northern Florida, to destinations on its lines in Georgia for distances not exceeding 170 miles would be unreasonable for the future to the extent that they might exceed a certain scale of distance rates prescribed therein. The divi- [fol. 40] sion further found that the Florida intrastate rates on similar logs for similar hauls, generally referred to as the Cummer scale, resulted, and would result, in undue preference and advantage of shippers of intrastate traffic within Florida, in undue prejudice to shippers of

interstate traffic from points in Florida to points in Georgia, and in unjust discrimination against interstate commerce, and that said undue preference and advantage, undue prejudice, and unjust discrimination should be removed by establishing rates for intrastate application within Florida which would correspond with the rates found reasonable for interstate application from northern Florida to Georgia. An order carrying these findings into effect was entered on August 2, 1928.

The State of Florida, the members of the Florida Railroad Commission, and certain manufacturers of lumber in Florida, interveners in this proceeding, brought suits in the United States District Court to enjoin that part of the order which dealt with the Florida intrastate rates. The court construed the order with respect to the Florida intrastate rates, which read "within the State of Florida," as being limited to points in northern Florida, and as so construed sustained the order. 30 Fed. (2d) 116. Thereafter, division 4 amended its order by inserting an additional exception of logs six feet or less in length, and, with respect to the intrastate rates, by substituting for the phrase "within the State of Florida" the words "within and throughout the entire State of Florida, without exception," such substitution being "for the purpose of clarification." On February 8, 1929, the order, amended as indicated, was complied with by the Atlantic Coast Line. Amended bills were filed in the District Court and the case there reheard. The Atlantic Coast Line was allowed to intervene in support of the order. The court upheld the amended order, but only [fol. 41] on the ground that it aimed at a discrimination against general interstate commerce caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier. 31 Fed. (2d) 580. On appeal, the Supreme Court, dealing particularly with the ground upon which the order was sustained by the lower court, reversed the decree of that court, holding with respect to the Florida intrastate rates that the order was not supported by appropriate findings. Florida v. United States, 282 U. S. 194. The Supreme Court, among other things, said:

The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in

question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

* * * * * * *

If the facts as to the intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce, either as between persons or localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

Thereafter, upon petitions filed by complainant and defendant, we reopened the proceeding and assigned it for further hearing, which has been held. A proposed report of the examiners was served upon the parties, to which defendant and interveners filed exceptions, and the case has been orally argued. Our conclusions differ in part from those of the examiners.

Upon rehearing the Atlantic Coast Line through nominally the defendant was in the position of a petitioner under section 13 (3) and (4) of the Act seeking relief from what it contends are unduly low State rates.

[fol. 42] At the further hearing the Florida interveners moved that the complaint should be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, if the complaint raises such an issue, which they still question, because of the absence of any legal interest in that issue by complainant and its failure to introduce evidence in support thereof. But, as stated in the report of division 4, the complaint in this proceeding alleges, among other things, that defendant's Florida intrastate rates are unjustly discriminatory against interstate commerce, in violation of section 13 of the Act. Evidence pertinent of that issue was introduced. Similar objections made by the Florida interveners before the Supreme Court with respect to the scope

of the proceeding were overruled, on the ground that "as the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company, the rates of which were in question, and other parties in interest, both shippers and carriers, were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence rather than to mere matters of pleading and procedure"; and the court further said:

> In making its order, the Commission could exercise all the authority conferred by the interstate commerce act for the purpose of removing such discrimination as was found to exist. If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allegations of the complaint.

By section 13 (2) the duty is placed upon us to "investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission," and the same paragraph provides that "no complaint shall at any time be dismissed because of the absence of direct [fol. 43] damage to the complainant." See Interstate Commerce Commission v. Baird, 194 U. S. 25, 39. Interveners' motion to dismiss is denied.

The effective date of the order entered by division 4 on August 2, 1928, was October 10, 1928. This date was postponed until February 8, 1929, when the rates prescribed were made effective on interstate traffic from northern Florida to Georgia and on intrastate traffic in Florida. The interstate rates have since remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties. The interstate and intrastate rates prescribed applied for distances only up to and including 170 miles. There was no occasion to prescribe either interstate or intrastate rates for greater distances, for the reason that the intrastate (Cummer scale) rates, which were alleged to cause the undue prejudice against shippers and localities in interstate commerce and unjust discrimination against in-

terstate commerce, applied for distances of only 170 miles and less, beyond which the Florida intrastate rates were much higher, distance considered, and were only slightly less than the then prevailing interstate log rates for the same distances.

Following the decision of the Supreme Court, rendered January 5, 1931, which set aside the order in so far as it applied to the Florida intrastate rates, the Cummer scale was restored, effective April 10, 1931, and is now in force. During the period from February 8, 1929, the effective date of the order, to April 10, 1931, the higher rates prescribed by the order were in effect.

The principal issue upon rehearing was whether the Cummer scale causes unjust discrimination against interstate commerce and that issue will now be considered.

[fol. 44] The history of the Cummer scale was related in considerable detail in the original report. Briefly summarized, it originated in a contract made in 1903 between the Jacksonville & Southwestern Railroad Company and the Cummer Lumber Company, both then controlled by the same interests; defendant acquired the properties of the former company in 1904, and assumed its obligations under the contract; during the pendency of the contract defendant entered into a similar agreement with the predecessor of intervener Brooks-Scanlon Corporation in connection with the transportation of approximately one billion feet of pine from Lafayette and Perry Counties, Fla., to its plant at Eastport, near Jacksonville, Fla., in trainloads; the Florida Railroad Commission refused to permit the establishment of the agreed rates in trainloads, and required that such rates as were established should apply on carloads and be available to all shippers on defendant's lines (see Appendix A); said rates became effective on carload shipments over all of defendant's Florida lines October 30, 1914, and, as modified by subsequent general rates changes (and extended from 150 to 170 miles), have since been in effect, except during the period from February 8, 1929, to April 10, 1931. The Cummer scale never has applied over other railroads nor elsewhere than in Florida on defendant's lines for distances of 170 miles and less.

The rates under the Cummer scale are published in amounts per car of 50,000 pounds, excess in proportion. Certain other rates referred to herein are published in a

similar manner. All will be stated in cents per 100 pounds.

Appendix B shows the various scales applying on logs on the most important railroads in southern territory. Column 1 shows the Florida intrastate rates applicable over defendant's lines on the kinds of logs here involved. The [fol. 45] rates shown in that column for distances up to and including 170 miles are the Cummer scale rates, beginning with a rate of 1.71 cents for 5 miles and ending with a rate of 3.7 cents for 170 miles. The rates shown in the same column for distances greater than 170 miles are class "P" rates prescribed by the Florida commission for application on the same kinds of logs. It will be noted that while the Cummer scale rate for 170 miles is 3.7 cents, the Florida commission class "P" rate for 171 miles is 8.33 cents, or more than twice as high. The Florida commission class "P" rates were prescribed as maxima for all distances, but the defendant has applied the Cummer scale rates for distances of 170 miles and less, which are substantially lower than the class "P" rates for those distances, and has maintained the full class "P" rates for distances over 170 miles.

The rates under the Cummer scale for 5 miles, 110 miles, and 170 miles are 5.03 per cent, 3.54 per cent, and 3.85 per cent, respectively, of the first-class rates for the same distances prescribed by us in Southern Class Rate Investigation, 113 I. C. C. 200, 207, 128 I. C. C. 567, for general interstate application throughout the South except to and from that portion of Florida south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, in which transportation conditions were found to warrant a basis of class rates substantially 15 per cent higher.

The scale prescribed in the original report herein is shown in column 5 of Appendix B. That scale had its origin in Pierpont Mfg. Co. v. Sou. Ry. Co., 50 I. C. C. 81, wherein division 3 found it to be reasonable and prescribed it for application on the Southern Railway from certain points in South Carolina to Savannah, Ga. In three subsequent cases the scale was reviewed and, as subjected to the general rate [fol. 46] changes, was either prescribed or approved for application on logs between various points in the South. Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, Southern Cotton Oil Co. v. A. C. L. R. R. Co., 120 I. C. C. 190, Sawmill Logs from North Carolina, 136 I. C. C. 370.

Meanwhile, the Alabama commission adopted the same scale and it is now in effect intrastate on defendant's lines in Alabama. The Georgia commission likewise adopted it for intrastate application in that State, but suspended its application because of the existence of the Cummer scale in Florida. The Corporation Commission of Virginia approved the scale for application on defendant's lines in Virginia and it is now in effect in that State. The scale, extended to cover distances up to 450 miles, was proposed by defendant for adoption in this case at the original hearings and defendant expressed willingness to establish it for interstate application over its entire system except south Florida. Although the former order prescribed the scale only from northern Florida to Georgia for distances of 170 miles and less, the defendant later voluntarily established it for uniform application on interstate traffic for all distances over its entire system except from points on its line south of the line of the Seaboard Air Line from Jacksonville to River Junction, from which it established rates 15 per cent higher than from points north of that line. In nearly all instances these rates were reductions from those previously in force.

Columns 3 and 4 of this appendix show the rates applying on logs intrastate in Florida on the Seaboard Air Line and the Georgia Southern and Florida, respectively. It will be noted that the scales applying on these lines are approximately twice as high as the Cummer scale.

Column 2 shows the Florida intrastate rates of defendant and the Seaboard Air Line on logs not over six feet in [fol. 47] length. These rates were established to permit the movement of short logs which would otherwise go to waste, but which could be used by manufacturers of crates. This scale is somewhat lower than the scale prescribed in the original report herein but is substantially higher than the Cummer scale. (On intrastate traffic in other States and on interstate traffic generally no rate distinction is made as between long and short logs.)

Some southern lines, particularly those operating in the Mississippi Valley, have two scales of log rates, one for ordinary local application, and the other, a scale of net transit or reshipping rates, applying when a certain proportion of the lumber or other manufactured product is shipped over the lines of the carrier delivering the logs.

The net transit or reshipping rates are usually lower than the local rates. The interstate net transit scale of the Illinois Central and Mobile & Ohio is typical of such scales. It is shown in column 7 of appendix B, and is considerably lower than the interstate local scales applying on those lines, which are shown in columns 8 and 9. This net transit scale, except for distances under 20 miles, is more than twice as high as the Cummer scale and compares favorably with the scale prescribed in the original report herein, (column 5). The latter scale, hereinafter referred to as defendant's interstate scale, now applies interstate generally between points not only on defendant's lines but also on the Seaboard Air Line, and the Southern, and as net transit rates on the Louisville & Nashville. It will thus be seen that this scale or one that compares favorably with it, applies interstate over the lines of the most important carriers in the South. In Farris Hardwood Lumber Co. v. Louisville & N. R. Co., 178 I. C. C. 671, division 4 prescribed gross (local) rates on logs from numerous origins in the South to destinations in Tennessee, which rates are con- [fol. 48] siderably higher than defendant's interstate scale. The single-line scale prescribed in that case is shown in column 6 of appendix B.

In appendix C the Cummer scale is compared with defendant's intrastate log rates in other southern States. It will be noted that the rates applicable in Virginia and Alabama, which were approved by the regulatory bodies of those States, are the same as defendant's interstate scale; that in Georgia the local rates are somewhat higher and the transit rates somewhat lower than defendant's interstate scale; and that the North Carolina and South Carolina rates are somewhat lower than defendant's interstate scale but average considerably higher than the Cummer scale. Applications are pending before the proper authorities to permit the establishment of defendant's interstate scale uniformly on intrastate traffic throughout those States, approval of which, it is testified, has been withheld because of the low intrastate rates in Florida.

Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that State than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on de-

fendant's system outside of Florida. The cost of the service in Florida is higher than on the remainder of the system, as shown by cost evidence referred to in detail hereinafter. Density of traffic in Florida is much lighter than on defendant's lines elsewhere. The following table shows the traffic density on defendant's system as a whole, on its lines in Florida, and on its system excluding Florida:

[fol. 49]

Revenue Ton-Miles per Mile of Road

| Year | System | Florida | System excluding Florida |
|---|---|---|---|
| 1921 | 514,955 | 341,152 | 618,635 |
| 1922 | 624,700 | 409,026 | 754,341 |
| 1923 | 764,228 | 512,505 | 915,990 |
| 1924 | 774,029 | 570,583 | 897,150 |
| 1925 | 907,958 | 740,633 | 1,009,225 |
| 1926 | 963,569 | 869,411 | 1,021,610 |
| 1927 | 747,717 | 570,932 | 861,713 |
| 1928 | 647,542 | 442,245 | 781,682 |
| 1929 | 637,039 | 400,002 | 794,395 |
| 1930 | 556,771 | 369,979 | 648,395 |

The Florida mileage increased from 37.4 per cent of the system mileage in 1921 to 40.0 per cent in 1930. It appears that the increase in traffic density on the system during 1925 and 1926 followed closely the increase in traffic density in Florida during those years.

In the Florida peninsula the traffic density is even lighter than in the northern part of Florida, that is, north of the Jacksonville-River Junction line of the Seaboard Air Line. In 1927 there were 894.54 miles of railroad in Florida north of that line that were operated for freight traffic, and 4,183.01 miles in Florida south of that line. The traffic density of the lines in Florida north of that line was 615,318 revenue ton-miles per mile of railroad as compared with 557,286 revenue ton-miles per mile of railroad south of that line. The less favorable operating conditions in Florida south of that line have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. See Southern Class Rate Investigation, 100 I. C. C. 513, 585, 626, 646; 128 I. C. C. 567, 594, 602.

The risk in transporting logs is small in so far as loss or damage to the logs is concerned but there is a much greater risk arising from the probability of a train wreck in the event the logs break loose.

[fol. 50] The Cummer scale is much lower than the basis of rates prescribed for application throughout central

territory in Public Service Commission of Indiana v. Ann Arbor R. R. Co. et al., 85 I. C. C. 533. Rates equal to 65 per cent of the sixth-class rates contemporaneously in effect between the same points were there found to be reasonable rates. The order there entered resulted in rates on logs ranging from 5.20 cents for 5 miles to 20.80 cents for 560 miles, the rate for 170 miles being 12.35 cents, whereas the Cummer scale rates for 5 miles and 170 miles are 1.71 cents and 3.70 cents, respectively. The report in that case referred to "the lower operating costs and the greater traffic density" in central territory than in southern territory.

So far as the record in this case shows there is no other scale of rates on logs as low as the Cummer scale.

Defendant's interstate scale and the Cummer scale are compared with the rates on other important low-grade commodities in appendix D. The freight charges per car under the rates shown are also compared. The rates shown on these other low-grade commodities are the rates applicable between Georgia and Florida, but substantially the same level of rates applies intrastate in northern Florida. Approximately 40 per cent of the total tonnage transported by defendant consists of these low-grade commodities, and a substantial portion of defendant's total freight revenues is derived from their transportation, as is indicated by the following results of a traffic test for the month of May, 1926:

[fol. 51]

| Commodity | Per cent of all tonnage | Per cent of all freight revenue | Value per ton |
|---|---|---|---|
| Logs | 7.26 | 2.05 | $2.80 |
| Brick, artificial stone | 3.30 | 2.32 | |
| Sand and gravel | 26.49 | 9.16 | $.35 to $1.35 |
| Lime, plaster | 0.46 | 0.39 | |
| Cement | 2.29 | 2.05 | 7.48 |

The above evidence warrants the conclusion that the Cummer scale rates are abnormally low. Upon similar evidence submitted at the original hearing division 4 found that they are "less than reasonably compensatory." We affirm that finding. In its report division 4 said:

It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-

mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C., 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services.

In considering the question of the relation of the Cummer scale rates to the defendant's income, we may notice what the defendant's income is. The evidence here shows the investment in defendant's properties as stated in its property investment accounts and its rate of return upon that amount. In 1926 its rate of return on investment in road and equipment, not including materials and supplies and cash, was 6.50 per cent. In the subsequent years up to the time of the rehearing its rate of return was as follows: 1927, 3.70 per cent; 1928, 3.52 per cent; 1929, 4.55 per [fol. 52] cent; 1930, 2.54 per cent. The following tabulation shows the supporting figures for the years 1926, 1929, and 1930:

| | 1926 | 1929 | 1930 |
|---|---|---|---|
| Investment in road and equipment | $270,564,508 | $282,948,571 | $285,343,512 |
| Materials and supplies | 8,699,718 | 6,386,742 | 6,704,666 |
| Cash | 8,494,003 | 17,133,937 | 13,932,421 |
| Total property investment at end of year | 287,758,229 | 306,439,250 | 305,977,599 |
| Net railway operating income | 17,585,807 | 12,874,207 | 7,241,304 |
| Rate of return: | | | |
| On investment in road and equipment | 6.50% | 4.55% | 2.54% |
| On investment in road and equipment including materials and supplies | 6.30% | 4.45% | 2.48% |
| On investment in road and equipment including materials and supplies and cash | 6.11% | 4.20% | 2.37% |

The defendant's Florida log traffic is an important one and the revenue from that traffic has a substantial influence

upon the defendant's total revenues. During the five-year period, 1926-1930, system log traffic averaged 7 per cent of the total system traffic. Nearly 50 per cent of the system log traffic was in Florida. For instance, in 1928, the defendant transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida.

The following table contains a brief analysis of the log traffic of the system as a whole and on its lines in Florida for the years 1928-1930:

[fol. 53]

| | 1928 | 1929 | 1930 |
|---|---|---|---|
| System: | | | |
| Total traffic (tons) | 20,402,922 | 18,951,802 | 16,784,331 |
| Log traffic (tons) | 1,422,874 | 949,840 | 667,612 |
| Per cent of log traffic to total traffic | 7.0 | 5.0 | 4.0 |
| Total revenue | $52,019,283 | $53,188,639 | $46,428,030 |
| Log revenue | 997,139 | 794,334 | 615,393 |
| Per cent of log revenue to total revenue | 1.9 | 1.5 | 1.3 |
| Florida: | | | |
| Total Florida traffic (tons) | 8,622,556 | 8,547,924 | 7,660,058 |
| Florida log traffic (tons) | 814,777 | 366,426 | 272,150 |
| Per cent of Florida log traffic to total Florida traffic | 9.4 | 4.3 | 3.6 |

The above figures reflect the small revenue burden borne by the log traffic. In 1928, for instance, the system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue.

The above analysis further shows that the revenue from the system log traffic did not decline proportionately with the volume of that traffic. In 1930 the log traffic of the system was 667,612 tons as compared with 1,422,874 tons in 1928, whereas the revenue from the 1930 log traffic was $615,393 as compared with $997,139 in 1928. Stated in percentages, in 1930 as compared with 1928 the log traffic of the system declined more than 50 per cent but the system log revenue declined only 38 per cent. The smaller decline in the revenue was no doubt due to the fact that in 1928 the Cummer scale was in effect whereas throughout 1930 the increased rates prescribed by the former order herein were collected.

Of much assistance in the determination of the effect of increased intrastate log rates in Florida on the revenues of defendant is the fact that the increased rates prescribed by the former order were actually in effect for a substantial

[fol. 54] period and were applied on the traffic moving during that period. Defendant submitted in evidence at the hearing in June, 1931, a statement showing all shipments of the kinds of logs here in question which moved over its lines intrastate in Florida during the period from February 8, 1929, to January 31, 1931. This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected.*

Averring that there is no condition at any point on its lines that would justify higher rates on logs than those applicable within the State of Florida, defendant submitted testimony to the following effect, showing that the existence of low log rates in one State has an influence upon the log rates in other States: The record in the present case shows the influence upon the Georgia rates of the intrastate rates in Florida. In South Carolina the State commission at first approved defendant's present interstate rates for intrastate application but later reduced them because the rates in North Carolina were lower. In the case that is now before the North Carolina commission the existence of rates between points in Virginia on a line other than defendant's is one of the principal obstacles to securing the application of defendant's uniform scale in North Carolina. In every case involving defendant's interstate rates on logs the existence of lower levels of rates within some of the States served by defendant has been urged as a justification for lower interstate rates on logs.

[fol. 55] Defendant submitted the following evidence to show the total losses it would have sustained had the Cummer scale been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system: The movement of logs on its system, including the long but not the short length logs in Florida, consisted of

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*Restitution suits for the recovery of all amounts paid in excess of the Cummer scale rates on shipments during the period from February 8, 1929, to April 10, 1931, when the higher intrastate rates prescribed by the annulled order of division 4 prevailed, were instituted and are pending.

3,450,765,300 pounds,* of which the interstate movement consisted of 456,134,800 pounds and the intrastate 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,42487,* of which the revenue on interstate movements amounted to $266,654.12, and on intrastate to $1,216,770.75. If the Cummer scale had been applicable on all its log movements the reduction in revenues would have been approximately as follows:

| | |
|---|---|
| Intrastate: | |
| Virginia | $2,926.20 |
| North Carolina | 95,804.17 |
| South Carolina | 99,793.77 |
| Georgia | 29,068.53 |
| Florida | 290,283.19 |
| Alabama | 13,245.47 |
| Interstate | 144,259.88 |
| Total | $675,381.21 |

These figures represent approximate losses, as they are not based upon an actual re-rating of the tonnage, except upon the long length logs in Florida, the losses on the interstate movement and on the intrastate movements other than in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.

If defendant's present interstate scale had applied uniformly on intrastate traffic on its system in 1929 and 1930 that scale would have had the following effect upon the defendant's revenues if the traffic had been the same: There [fol. 56] would have been an increase in revenues in North Carolina of $65,427.27, in South Carolina $7,154.14, in Georgia $14,567.52, a total increase of $87,229.90. There would, of course, have been no change in Florida, in Virginia, or in Alabama, because the present interstate scale was then in effect in those States. Nor would there have been any change on interstate traffic because the defendant's present interstate scale was then in effect.

* These figures do not exactly correspond with those given in the table set out above, but the variance is so slight that it is negligible.

The Florida interveners contend that the increase in the Florida intrastate rates has had the effect of reducing the volume of the Florida log traffic and that as a consequence there has been a decrease in the defendant's revenue from that traffic. It is true that since the original hearings in this proceeding (October, 1926, and January, 1927) there has been a decrease in the volume of the Florida intrastate log movement. The extent of this decrease is indicated in the following table showing the number of cars and the tonnage transported therein during the five years 1926-1930:

| Year | Number of cars | Number of tons |
|---|---|---|
| 1926 | 36,799 | 1,214,361 |
| 1927 | 35,415 | 1,052,927 |
| 1928 | 27,119 | 814,777 |
| 1929 | 13,207 | 366,426 |
| 1930 | 9,376 | 272,150 |

The figures for 1926 and 1927 must be discounted somewhat for the reason that they include posts, poles, and cord wood as well as logs. The statistics for those years grouped the four commodities and information as to the exact number of cars and tons of logs that moved is not available.

Parts of the decline in the Florida log traffic has been due to the fact that two lumber companies which operated mills near Jacksonville at the time of the original hearings, the Brooks-Scanlon Corporation at Eastport and the Putnam Lumber Company at Milldale and Ortega, have since moved their plants to locations adjacent to their timber [fol. 57] holdings and no longer ship their logs over defendant's lines. At the time of the original hearings these companies drew their logs, usually in trainlo-d lots, from points on defendant's Perry branch, about 166 miles west of Jacksonville. There was evidence to the effect that it was uneconomical for mills to be located so far from the timber and that even the Cummer scale rate for that distance, 3.7 cents, was higher than these mills could afford to pay. The Putnam Lumber Company then indicated its intention to abandon those mills and to develop a plant in the timber. In 1926 it acquired a mill at Bond's Mill, about 85 miles south of Jacksonville, and in 1927 and 1928 it completed the construction of two mills at Cross City, on defendant's Perry branch. Shortly after the intrastate rates were increased in February, 1929, the Brooks-Scanlon

Corporation began the construction of a mill at Foley, about 5½ miles southwest of Perry. Upon the completion of that mill the one at Eastport was abandoned. During the six-year period from 1923 to 1928 the defendant's gross revenues from the movement to Eastport averaged $309,882.60 a year. Defendant's gross revenues from the movements to the Putnam mills averaged slightly more than $200,000 a year. This movement would have been discontinued even though the Cummer scale had remained in force, since the company had decided to move its mills to the timber prior to the rate increase.

The defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects; first, it has rendered unnecessary the transportation of the logs at the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing ton-[fol. 58] nage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale. The average weight of 983 cars of logs handled under the Cummer scale for the Brooks-Scanlon Corporation and the Putnam Lumber Company was 60,200 pounds per car, the average haul was 158 miles, and the revenue was $20.47 per car, or 12.9 cents per car-mile. In 1930, 90 per cent of the lumber movement from Foley and 70 per cent of the lumber movement from Cross City to destinations on defendant's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville is 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the revenue per car from Foley to Jacksonville, 169 miles, is $47.53, which equals 28.1 cents per car-mile. The rate on lumber from Cross City to Jacksonville, 118 miles, is 8⅓ cents, producing revenue of $43.33 per car or 36.7 cents per car-mile.

Another large movement at the time of the original hearings was from Otto Creek, a point on defendant's Perry branch, to the mill of the Cummer Cypress Company at Lacoochee. This movement, which was in trainload lots, began in January, 1925, and ended on May 5, 1928, which was after the original hearings but prior to the decision of division 4 herein, August 2, 1928. This movement ended

not because of the rate increase but because of the exhaustion of the company's timber near Otter Creek. Defendant's gross revenues from this movement aggregated $120,261.40. In January, 1929, the Cummer Company began to ship logs from Homosassa over defendant's line to Otter Creek, where it operated a small, secondary plant, and it continued this movement after the increased intrastate [fol. 59] rates became effective on February 8, 1929. In April, 1929, it began to ship cypress logs from Homosassa to its mill at Lacoochee, over defendant's line. In February, 1930, the movement from Homosassa to both Otter Creek and Lacoochee ended, and since then the Cummer Cypress Company has shipped no logs over the defendant's lines. Defendant's gross revenues from the Homosassa-Otter Creek movement were $13,507.09 and those from the Homosassa-Lacoochee movement was $77,609.89. These movements were stopped in February, 1930, not because of the rate increase, for the movements continued for a year after the increase became effective, but because the timber at Homosassa was practically cut out, although some additional logs of inferior grade would probably have been cut and shipped had the Cummer scale remained in force. Its present supply of logs from timber on the Withlacoochee River is hauled over its own logging road to the Seaboard Air Line and thence over that line under trackage rights for a short distance to its mill at Lacoochee.

Representatives of these three interveners, the Putnam Lumber Company, the Brooks-Scanlon Corporation and the Cummer Cypress Company, testified at the further hearings that they would not resume the shipment of their logs over defendant's lines even if the Cummer scale remained in effect.

The fact that the total movement during the period of nearly two years from February 8, 1929, to January 31, 1931, consisted of 18,602 carloads was verified by an investigation conducted by interveners; and their evidence, after eliminating 7,353 cars which moved in trainload lots from Hines to Palatka, showed that of the remaining volume (11,169 cars) 7,965 cars moved in the period from February 8, 1929, to January 31, 1930, and 3,204 cars in the succeeding 12 months. (They were unable to develop when 81 cars moved.)

[fol. 60] Interveners' data also showed the following with respect to these 11,169 carloads:

| | Pine | | Cypress | | Hardwood | |
|---|---|---|---|---|---|---|
| | Cars | Revenue | Cars | Revenue | Cars | Revenue |
| First period | 1,282 | $31,052.33 | 2,890 | $73,866.90 | 3,793 | $96,971.97 |
| Second period | 296 | 5,288.84 | 1,566 | 36,387.01 | 1,342 | 28,658.90 |

From what has been said above it is clear that the decline in the Florida log movement can not be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large part has been due to the change from mill locations uneconomical because too far from the timber and cessation of movements because of exhaustion of the timber. The generally depressed conditions throughout the country, in Florida, in the lumber industry generally and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida. The table below shows the decline in the total system traffic and in the system log traffic during the five-year period 1926-1930:

| | Total traffic | | Log traffic | |
|---|---|---|---|---|
| Year | Cars | Tons | Cars | Tons |
| 1926 | 944,101 | 27,025,422 | 79,114* | 2,196,971* |
| 1927 | 839,049 | 23,134,496 | 78,532* | 2,056,593* |
| 1928 | 752,778 | 20,402,922 | 54,801 | 1,422,874 |
| 1929 | 718,549 | 18,951,802 | 37,206 | 949,840 |
| 1930 | 621,232 | 16,784,331 | 25,738 | 667,612 |

* Includes posts, poles and cord wood.

Likewise there has been a decline in the lumber traffic throughout the United States, in the Southern District, and on the defendant's system, as shown by the following table which also shows the gross revenues received by defendant for the lumber tonnage transported over its lines:

[fol. 61]

| | United States | Southern District | Atlantic Coast Line | |
|---|---|---|---|---|
| Year | Tons | Tons | Tons | Gross revenue |
| 1920 | 48,617,871 | 17,708,828 | 2,665,512 | $5,503,389.44 |
| 1925 | 49,015,498 | 20,311,619 | 3,751,016 | 8,092,819.86 |
| 1928 | 42,508,620 | 17,872,965 | 3,093,168 | 6,641,449.38 |
| 1929 | 40,565,975 | 17,403,907 | 3,109,401 | 6,750,434.28 |
| 1930 | 27,584,148 | 11,395,877 | 2,211,258 | 4,711,383.72 |

Thus, while there has been a substantial decline in the Florida log traffic, there have also been declines in other traffic, and the same forces that operated to cause a decline in other traffic were also no doubt responsible for much of the decline in the Florida log traffic.

Coming now to consideration of the probable future volume of the Florida log traffic, it is relevant to inquire into the total amount of standing timber now in Florida and how much of the total is reasonably tributary to the defendant's lines.

The record indicates that, unlike most of the other southern States, vast stands of virgin timber remain in Florida. An official bulletin of the United States Department of Agriculture (Circular No. 124, October, 1930, entitled "Rate of Growth of Second-Growth Southern Pines in Full Stands") indicates that in 1927 there remained in the eleven chief pine-producing States of the South 12,650,000 acres of virgin pine, of which 5,450,000 acres, or 43 per cent, were in Florida. That bulletin also states that in addition to this area of virgin pine, there is an area of 12,550,000 acres of cut-over pine lands in Florida, of which 3,150,000 acres have been fully or partially restocked to saw timber, and 4,300,000 acres fully or partially restocked to saplings and cord wood.

The figures published in the Department's bulletin were based chiefly on a survey of standing pine timber made in the main producing regions from Virginia to Texas in 1924. The Department's bulletin states that this survey, which was conducted by the Southern Pine Association, "is [fol. 62] believed to be the most accurate survey of timber resources yet made in any important lumber-producing region of the United States. The data were obtained in the form of board feet, but have been converted into acreages for the purpose of this bulletin. The computed figures have been checked against the local knowledge of State and Federal forest officers and other authorities." A compendium published by the Southern Pine Association, entitled "Economic Conditions in Southern Pine Industry", presented by the Association to the United States Timber Conservation Board, dated July 1, 1931, shows the number of board feet in the acreages published in the Department's bulletin. The 1924 survey showed that in Florida the pine timber stand was 21,382,000,000 feet of longleaf and 2,966,000,000 feet of shortleaf, or a total of 24,348,000,000 feet of pine. The production in Florida during the six years 1925-1930, totaled 4,564,000,000 feet, the regrowth in those six years being 2,129,000,000 feet, or a net depletion of 2,435,000,000 feet, leaving the then present (July, 1931) pine timber stand in Florida, 21,913,000,000 feet.

The above figures include pine only. That species of wood is of primary importance in the Florida lumber industry. Cypress is second in importance, and hardwoods such as ash, gum, hickory, cedar, and oak, are third.* The record contains no figures as to the stands of cypress and hardwoods in Florida, but there is testimony as to the production, indicating that the annual production of cypress [fol. 63] in Florida is around 200,000,000 feet, and that hardwood constitutes probably 5 to 10 per cent of the total business.

The record affords no accurate basis of determining how much of the standing timber in Florida is tributary to the Atlantic Coast Line. By reference to the map of that railroad in Florida, however, it will be seen that its main and branch lines form a network which virtually covers the State, except the extreme southeastern part. This fact, in connection with the practice of constructing logging roads, seems to indicate that a large percentage of the standing timber in Florida is tributary to defendant's lines. The defendant's freight traffic manager testified:

"Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the south Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of regrowth. However, if the Atlantic Coast Line can be assumed to transport 40% of the logs to be produced in Florida from timber now standing, it will handle approximately nine billion feet, or approximately 128,570 cars of

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* The Cummer scale applies on all species of logs except cedar. The interstate rates found unreasonable in the original report herein applied on all species of logs except walnut, cherry and cedar. For this reason, the former order in prescribing interstate and intrastate rates on logs excepted those three species. The exception is unimportant in so far as walnut and cherry are concerned, for there appears to be no movement of those species of logs in Florida. The term "hardwood" as used hereinafter will be used to mean hardwoods other than those three.

logs. If the average length of haul should be 81 miles, as was the case in 1929-30, which average haul may be expected to be increased as the timber becomes more scarce, our revenues under the Cummer scale, at an average revenue of $16.10 per car, would be equivalent to gross revenue of $2,169,977.00. If the same transportation should be performed at the rates prescribed by the Interstate Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be $4,949,945.00. The difference in the gross revenue under the two scales of rates would be $2,779,968.00."

A large movement of logs which was going on at the time of the original hearings, and which still continues, is the movement of cypress logs from Hines, a point on defendant's Perry branch, to the lumber manufacturing [fol. 64] plant of the Wilson Cypress Company at Palatka. This Hines-Palatka movement, which is in trainload lots, began in January, 1926. The company has its own logging road in the timber, connecting with the defendant's line at Hines, from which the haul to Palatka is 119 miles. Although this intervener, as well as others, testified at the original hearing that it would be impossible to continue the movement of logs over defendant's lines if the Cummer scale were increased, it actually has done so. It appears that under normal conditions it will continue to ship these logs over the defendant's line until the timber adjacent to the Perry branch is cut out. Under the normal rate of cutting, it appears this would occur in about one and one-half to two years after the time of the further hearing. During the four-year period, 1926-1929, the defendant's gross revenue from the Hines-Palatka movement averaged nearly $90,000 a year. During that four-year period 16,658 carloads were shipped, averaging 4,164 carloads a year. During 1930, when the increased rates were in effect, 5,142 carloads were shipped, on which the defendant's gross revenue was $205,096.20, averaging $39.88 per car at the increased rate of 6.5 cents for the 119-mile haul. During the first five months of 1931, 1,916 cars moved on which the freight charges (gross revenue of defendant) amounted to $50,366.17. Palatka is served by the Southern Railway System (Georgia, Southern & Florida

Ry.) and by the Florida East Coast Railway, as well as by defendant's line. There is a small movement of logs into the Wilson Cypress Company's mill at Palatka over the Southern and the Florida East Coast. Besides the movement over defendant's line from Hines there is a small movement over defendant's lines from various other points in Florida.

[fol. 65] There is also at present a small movement over defendant's lines from various Florida points to the mill of the Putnam Lumber Company at Bonds Mill and a larger movement to the mill of that company at Cross City. During the period from February 8, 1929, to January 31, 1931, the movement to Cross City consisted of 1,260 carloads of pine and cypress logs from seven different points of origin. During the succeeding five months the movement to Cross City was 102 carloads from three points of origin.

Although the Cummer Cypress Company no longer ships its logs over defendant's lines, it does purchase and receive logs shipped over defendant's lines to its mill at Lacoochee from points within distances of 10 to 18 miles. During the five-month period above mentioned this movement totalled 93 cars.

In addition to the above-mentioned movements to Palataka, Bonds Mill, Cross City, and Lacoochee, there were movements during said five-month period to Apopka, Buffalo Bluff, Gainesville, Jacksonville, Kissimmee, Lake City, Loughman, Leesburg, Nocatee, Perry, St. Petersburg, Sanford, and Tampa, from numerous points of origin.

At the time of the former hearings there was and at present there is a substantial movement of hardwood logs in Florida. There are several mills in the State that are engaged exclusively in the production of hardwood lumber, including that of the intervener Wilson Lumber Company at Perry. Hardwood trees are usually found in tracts consisting predominately of pine and cypress and are usually logged as an incident to, or by-product of, the pine or cypress operations. The hardwood lumber business is relatively new in Florida. Formerly the hardwood trees were left standing but now it is the practice of the pine [fol. 66] or cypress operators to cut the hardwood and sell the logs to the hardwood mills. In some instances the

hardwood operators own their own tracts of timber. The Wilson Lumber Company built its hardwood mill at Perry in 1927. At that time it made contracts with several of the large pine and cypress operators in Florida for the purchase of the hardwood logs cut incidentally to their operations. There have been fairly large movements of ash, black gum and other hardwood logs from Hines, Cross City, Foley, Homosassa, Otter Creek and other points to Perry. There have also been some movements of hardwood as well as cypress to Jacksonville. As shown by the table set out above, 5,135 carloads of hardwood logs moved over defendant's lines in Florida during the period February 8, 1929, to January 31, 1931.

Another type of log movement that frequently takes place in Florida is the movement from the log shipping point of one lumber manufacturer to the mill of another lumber manufacturer. Such movements occur where the lumber company that cuts the logs is engaged in the manufacture and sale of a particular kind of lumber, e. g., pine, and sells its cypress logs to a cypress lumber manufacturer. Conversely, the pine manufacturer often buys pine logs cut by a cypress manufacturer.

The 18,602 cars which moved during the period from February 8, 1929, to January 31, 1931, were shipped from 113 different origins to 20 different destinations in all parts of the State, and the hauls ranged from 6 to 169 miles. At the hearing in July, 1931, defendant submitted a supplemental statement showing that the volume of the log movement over its lines in Florida during the succeeding five months, that is, from February 1 to June 30, 1931, which were the five months immediately preceding [fol. 67] the hearing, was 2,765 cars. (The Cummer scale was restored during that period, April 10, 1931.) These cars were shipped from 52 different stations to 17 different destinations.

The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future. The movement at present is at a low ebb, but in view of depressed conditions the present movement can not be taken as the criterion for the future. In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in

Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better.

In the Florida log transportation some competition from trucks is met but only to a very slight degree. It is not shown that logs can or will be transported by trucks except for very short distances, nor that truck competition was or will be increased under advanced rates.

The defendant urges that the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling; that its study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, results in an actual loss on the log traffic as a whole. It is manifest that if the Cummer scale produces less revenue than the cost [fol. 68] of the service, declines in the traffic have the favorable effect of reducing defendant's losses and that an increase in the traffic would only serve to augment those losses. In support of its contention that the Cummer scale results in losses, defendant submitted voluminous evidence bearing upon the cost of transporting logs in Florida. It is necessary to consider this evidence with a view to determining whether it shows that the Cummer scale rates do result in revenue losses.

The defendant's cost evidence started with figures showing that during the fiscal year ended June 30, 1929, the following road train expenses were incurred in transporting its system freight traffic:

[fol. 69]

| Acct. No. | | |
|---|---|---|
| 401 | Trainmen | $2,048,715 |
| 392 | Train enginemen | 1,571,324 |
| 394 | Fuel for train locomotives | 2,281,332 |
| 397 | Water for train locomotives | 96,575 |
| 398 | Lubricants for train locomotives | 42,283 |
| 399 | Other supplies for train locomotives | 29,281 |
| 400 | Engine-house expenses—train | 450,414 |
| 402 | Train supplies and expenses | 400,760 |
| | Total | $6,920,684 |

These expenses are denominated in the testimony and exhibits of record as "out-of-pocket" expenses and that term will be used herein, although it should be understood that it has reference only to the particular expenses charged to the above enumerated accounts.

An analysis was then made of the accounts of the third division which could be definitely assigned to the freight service without question to develop the out-of-pocket costs for that division. The third division is wholly in Florida, and includes all mileage south of Jacksonville. The carrier's total mileage in Florida is 2,061.38 miles, all of which, except 126.34 miles north and west of Jacksonville, is in the third division. Hence, the out-of-pocket expenses on the third division were taken as fairly representative of the out-of-pocket expenses in Florida. Taking into consideration the total tonnage carried and the distance of the carriage, and including the empty-car mileage, the out-of-pocket cost per gross ton-mile was determined. For the third division that figure was ascertained to be .0882888 cent. The items which made up the total out-of-pocket expenses for the third division were:

| Acct. No. | | |
|---|---|---|
| 401 | Trainmen | $637,337.05 |
| 392 | Train enginemen | 497,364.58 |
| 394 | Fuel for train locomotives | 606,920.94 |
| 397 | Water for train locomotives | 28,406.12 |
| 398 | Lubricants for train locomotives | 15,379.52 |
| 399 | Other supplies for train locomotives | 9,575.70 |
| 400 | Engine-house expenses—train | 126,854.35 |
| 402 | Train supplies and expenses | 137,772.40 |
| | Total | $2,059,610.66 |

[fol. 70] The gross ton-miles in Florida during the fiscal year were 2,332,812,000, which, divided into the total out-of-pocket expenses during that year, $2,059,610.66, resulted in the figure .0882888 cent per gross ton-mile. The out-of-pocket expense on the other two divisions combined, similarly reduced to the unit of gross ton-miles, was .053263 cent. An analysis was also made of the out-of-pocket costs on the car-mile basis, which gave final cost figures not materially different from those developed on the gross ton-mile basis hereinafter stated.

The total freight operating expenses of the system during the year 1929 were $36,308,813,* over five times the system out-of-pocket expenses of $6,920,684. The exact ratio of the latter to the former is 19.069.** If this ratio is used as a basis of expanding or projecting the out-of-pocket expenses to determine the total freight operating expenses in Florida, the latter is found to be .462996 cent per gross ton-mile.

The weighted average distance of the 18,602 carloads of logs transported by defendant in Florida during the period from February 8, 1929, to January 31, 1931, was 81.36 miles, the average weight of the lading was 56,754 pounds, and the tare weight of the cars was 33,000 pounds, resulting in a gross weight of the loaded movement of 89,754 pounds. The testimony is to the effect that the log cars were returned empty almost without exception. Using 100 per cent as the proper figure for return empty movement, [fol. 71] the gross weight of the loaded and empty movement was 122,754 pounds or 61.377 tons. The latter figure multiplied by 81.36 miles gives the gross ton-miles as 4,994. The unit cost of .462996 cent per gross ton-mile applied to 4,994 gross ton-miles results in a cost of $23.12 per car. This figure includes nothing for taxes or interest on investment. When $3.56 per car, as the proportion of taxes paid by defendant to the State of Florida, and $7.62 per car as the proportion of interest on investment of 5¾ per cent, are added, the cost becomes $34.30 per car.

The defendant did not present the figure $34.30 per car as representing the actual cost of the service, but stated that it was greater than the cost because it included certain expenses which were not attributable to the handling of logs.

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*The primary segregation of total operating expenses as between freight and passenger was made in accordance with the formula which we have prescribed. See order of Dec. 1, 1919, effective Jan. 1, 1920, providing rules for the separation of operating expenses between freight and passenger service on large steam roads. The total operating expenses were $53,431,589. The proportion assigned to freight under that formula, $36,308,813, was 67.95% of the total.

**Exhibits of record erroneously show this ratio as 23.549. Defendant agreed that the correct ratio is 19.069.

Defendant also presented another figure, $25.23 per car, based on the ratio of system out-of-pocket expenses to total system freight operating expenses after many deductions were made from the latter. There were deducted, first, all freight yard accounts, 42 in all, the total of which aggregated $4,550,039. Then all amounts in 15 other accounts, aggregating $4,665,936, were completely eliminated. Many of these were obviously not directly attributable to the handling of logs, such as wharves and docks, paving, assessments for public improvements, floating equipment, outside agencies, advertising, traffic associations, industrial and immigration bureaus. Some of the others were clearly attributable, at least in part, to the handling of logs but were entirely omitted because of the difficulty of ascertaining the proper proportion that should be allocated to that traffic. For example, station employees in the transportation block of expenses, account 373, shows charges to freight of $3,281,352.20. There would seem to be no doubt but that a [fol. 72] portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks, and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services. But that account was entirely eliminated. Finally there was eliminated 4.4897 per cent of general expenses, amounting to $413,769. The grand total thus eliminated aggregated $9,629,744.

This aggregate was deducted from the total freight operating expenses of $36,308,813, leaving the sum of $26,679,069 denominated the "total haulage expenses." The ratio of the total system out-of-pocket expenses, $6,920,684, to the total haulage expenses, $26,679,069, is 25.9405.*

Use of this ratio results in a unit figure of .340351 cent per gross ton-mile (.0882888 cent divided by 25.9405 multiplied by 100). This results in a haulage cost of $17.00 per car. When a proportionate amount is added for Florida property taxes, $2.62 per car, the haulage cost plus taxes becomes $19.62 per car. A proportionate amount added to that figure as representing interest on investment at 5¾

* This ratio is erroneously shown in exhibits of record as 35.027. As a result of the error the cost figures were shown to be lower than they would have been if the correct ratio had been used.

per cent, $5.61 per car, results in a final figure of $25.23 per car.

The defendant's general auditor testified that the actual cost lies somewhere between $18.75** and $34.30 per car; that in determining the lower figure he eliminated over $9,000,000 of expenses embracing all yard items and certain other items, some of which expenses are properly attrib- [fol. 73] utable to the handling of logs, and that this figure understates the cost of handling logs; but from his experience in studying accounts he does not believe it would be proper to include all of the expenses included in the higher figure, and that therefore the cost lies somewhere between the two. Based on his survey of the application of the Cummer scale rates, and from his experience as an accountant, he expressed the opinion that the Cummer scale does not afford a revenue which is equal to the cost of doing the business covered thereby; that as shown by the exhibits filed, in practically every case the cost, including a reasonable return on investment, exceeds the revenue derived, and in some instances the operating expenses exceed the revenue, without including any taxes or return on investment.

The average revenue under the Cummer scale on the 18,602 cars above referred to was $15.12 per car. The rates prescribed by the order previously entered in this proceeding were in force during the period in which all of these 18,602 cars moved, and the defendant's actual aggregate gross revenue on them was $571,508.94. Had the Cummer scale been in effect, the aggregate gross revenue would have been $281,225.75. The latter sum divided by 18,602 gives the above-stated average revenue per car under the Cummer scale—$15.12 per car. It will be noted that this revenue is substantially below either of the two cost figures mentioned above, $25.23 per car and $34.30 per car. It is $1.88 per car less than the haulage cost stated above, $17.00 per car.

The unit cost as given above, .340351 cent per gross ton-mile as the purely haulage cost, and .462996 cent per gross ton-mile as the total operating cost, as applied to specific movements, results in the following figures, with which

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** This figure is based on the erroneous ratio of 35.027. When recalculated on basis of the correct ratio of 25.9405 it becomes $25.23.

are included for comparative purposes the figures for the [fol. 74] averages of the total movement of 18,602 cars referred to above:

| Movement | Miles | Per car: Revenue on Cummer scale | Purely haulage expense[1] | Purely haulage expense plus taxes and return | Total operating expense[2] | Total operating expense plus taxes and return |
|---|---|---|---|---|---|---|
| Average of 18,602 cars during period from Feb. 8, 1929, to Jan. 31, 1931 | 81.36 | $15.12 | $17.00 | $25.23 | $23.12 | $34.30 |
| Homosassa to Lacoochee | 68. | 12.44 | 13.58 | 20.15 | 18.47 | 27.40 |
| Homosassa to Otter Creek | 52. | 12.02 | 10.80 | 16.06 | 14.69 | 21.79 |
| Perry to Eastport | 169. | 22.10 | 36.16 | 53.65 | 49.19 | 72.98 |
| Carbur to Eastport | 152. | 20.30 | 32.52 | 48.25 | 44.23 | 65.63 |
| Homosassa to Perry | 130. | 20.62 | 28.80 | 42.73 | 39.18 | 58.13 |
| Astor to Groveland | 99. | 13.78 | 19.54 | 28.99 | 26.58 | 39.43 |

[1] Based on unit cost of .340351 cent per gross ton-mile.
[2] Based on unit cost of .462996 cent per gross ton-mile.

Defendant also submitted evidence showing the actual out-of-pocket expenses for the movement of logs from Hines to Palatka during the month of November, 1930, agreed to be typical of the year 1930. This evidence discloses the results of a special examination of the expenses incurred in connection with that particular movement. The Wilson Cypress Company operates a private logging railroad from its tract of timber to a point of connection with defendant's line at Hines. The cars used in this service are ordinary flat cars owned by defendant but specially assigned to the Wilson Cypress Company, which has equipped them with special devices for log transportation. This special equipment, owned and maintained by the lumber company, consists of four stanchions on each side of the car, which fit [fol. 75] into pockets of a design which permits release of the stanchions to facilitate quick unloading. Chains fastened to the stanchions hold the logs in place, and permit the car to be loaded more heavily than a car staked in the ordinary way. The cars are loaded in the timber and the trains are hauled by the lumber company over its logging road to Hines. The defendant transports the trains to Palatka, 119 miles, and makes delivery at the lumber company's plant. A trainload of 40 to 45 cars moves from Hines to Palatka every other day. The actual time consumed in the trip from Hines to Palatka is about 8 hours.

During the month in question this log movement amounted to 3,734,936 gross ton-miles, whereas the movement between Hines and Palatka other than logs was only 128,515 gross ton-miles. Inasmuch as the latter is only 3.3 per cent of the total movement, the out-of-pocket expenses for the movement of the trains, reduced to the gross ton-mile basis, may be taken as fairly reflecting the out-of-pocket expenses attributable to logs.

The out-of-pocket expense for the total traffic, 3,863,451 gross ton-miles, was $2,398.55, made up as follows:

| Account | | |
|---|---|---|
| 392 | Train Enginemen | $506.19 |
| 394 | Fuel for Train Locomotives | 1,138.49 |
| 397 | Water for Train Locomotives | 39.50 |
| 398 | Lubricants for Train Locomotives | 8.27 |
| 399 | Other Supplies for Train Locomotives | 8.82 |
| 400 | Enginehouse Expenses—Train | 19.05 |
| 401 | Trainmen | 562.86 |
| 402 | Train Supplies and Expenses | 115.37 |
| | Total | $2,398.55 |

[fol. 76] This resulted in an out-of-pocket expense for this movement of .0620831 cent per gross ton-mile. The average loading of the log cars from Hines to Palatka during November, 1930, was 64,000 pounds and the tare weight of the cars was 33,000 pounds, resulting in a gross weight on the loaded movement of 97,000 pounds, and, since the return empty movement of these cars is 100 per cent, there should be added the tare weight of the car for the empty movement, making the gross weight of the loaded and empty movement 130,000 pounds, or 65 tons. Thus, 65 tons were transported 119 miles, equivalent to 7,735 gross ton-miles for each car. If the out-of-pocket expenses on this movement, .0620831 cent per gross ton-mile, were 25.9405 per cent of the total haulage expenses, as they were on the system as a whole, then the total haulage expenses on this movement were $18.51 per car. When 6 cents per car for Federal income taxes, and $2.85 per car for Florida taxes are added, the haulage cost plus taxes is $21.42, and if $6.10 as representing a proportionate share of interest on investment at 5¾ per cent is added to the latter figure, the haulage cost plus taxes and return becomes $27.52 per car.

During the month in question the rates prescribed by the former order were in effect. The rate prescribed for the distance from Hines to Palatka, 119 miles, was 6.5 cents. This rate applied to the average weight of the Hines-Palatka shipments, 64,000 pounds, resulted in a revenue of $41.60 per car. The rate under the Cummer scale for 119 miles is 3.2 cents, yielding a revenue under the weight of 64,000 pounds of logs of $20.48 per car. This revenue is but $1.97 per car greater than the purely haulage cost of $18.51 per car. It is 94 cents less than the haulage cost plus taxes, $21.42, and is $7.04 less than the haulage cost plus taxes and interest, $27.52.

[fol. 77] The costs in connection with the trainload movement from Hines to Palatka are undoubtedly less than they are in connection with movements in single carload lots. The Cummer scale rates are not trainload rates but apply on single carloads; and all present log movements in Florida other than the Hines to Palatka movement are carload rather than trainload movements. Practically the only service performed in the Hines-Palatka movement is the road haul, except that two switches a day are made at the Palatka plant. No other terminal services, such as are necessary in single carlot movements, are performed.

The Florida interveners presented no affirmative evidence tending to show the cost of transporting logs in Florida but criticized defendant's cost evidence, their principal criticisms being that the defendant's cost figures are based on the average out-of-pocket expense of handling all traffic on the third division and that the methods employed in assigning maintenance and other expenses, taxes, and return or interest on investment to this traffic were erroneous. The unit cost figure of .0882888 cent per gross ton-mile was admitted by defendant to represent merely the average out-of-pocket expense of handling all traffic on the third division. It can not, therefore, be accepted as indicating the average out-of-pocket cost to defendant of transporting logs in Florida. Nor. Pacific Ry. v. Dept. Public Works, 268 U. S. 39; Calif. Growers' & Shippers' Protective League v. S. P. Co., 129 I. C. C. 25, 52. It appears that nearly 25 per cent of the traffic moving in Florida consists of fruits and vegetables which require special and costly service. The cost of such service enters into the average out-of-pocket cost of the third division and would apparently tend

to make it higher than the actual out-of-pocket cost of the log traffic. The conclusion seems to follow that the aver-
[fol. 78] age cost figure of .0882888 cent per gross-ton mile is higher than the actual out-of-pocket cost of the Florida log traffic.

On the other hand it appears that the unit out-of-pocket cost figure developed in connection with the Hines to Palatka movement .0620831 cent per gross-ton mile, is below the average out-of-pocket cost of the Florida log transportation. That movement, it must be remembered, was a regular one in trainload lots of 40 to 45 cars, and the cost of handling such solid trainloads direct between two given points without any intermediate train breakup in classification yards and without any switching en route, is undoubtedly less than on single carload movements which are handled in ordinary pick-up service.

There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things. Using the year 1929 as illustrative, freight traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using a 5-year average, 1926 to 1930, inclusive, which included the boom period, freight traffic density in Florida was 72.8 per cent of that for the system including Florida, and 63.9 per cent of that for the system excluding Florida. Also using the year 1929 as
[fol. 79] illustrative freight service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight service locomotive-miles in Florida were 30.92 per cent of those for the system including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida; loaded and empty freight car-miles in Florida were 22.43 per cent of those for the system including Florida, and revenue ton-miles in Florida were 25.05 per cent of those for the system including Florida. In 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida, as compared with 26.17 loaded cars or 43.28 loaded and empty cars per train on the system including Florida.

In determining the out-of-pocket expenses in Florida, the allocation of revenues and expenses to Florida was made by defendant on the following basis: Intrastate revenues were directly assigned and interstate revenues were apportioned to that State on the basis of a mileag prorate, the operating expenses being allocated on the basis of the operating ratio applied to the revenues. As all interstate traffic handled in Florida originates or terminates in that State, the apportionment of the revenues therefrom on the basis of a straight mileage prorate, without regard to the origin or destination terminal services involved, tends to understate the revenues from that class of traffic. Further, the Florida commission refers to the higher rates on class traffic moving to and from points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line, than on class traffic moving to and from other sections of the South, which were prescribed by this Commission in Southern Class Rate Investigation, 128 I. C. C. 567, and points out that Florida was not given proper credit on this account in apportioning the interstate rev- [fol. 80] enues on the basis of a mileage prorate. Defendant admits that the interstate revenues apportioned to Florida were understated to some extent on account of these things, but calls attention to the fact that the operating expenses were also understated, because the allocation was based upon the revenues. Defendant also refers to the service performed by the balance of its system in getting coal and supplies to Florida. Coal is charged to the operations in Florida at the average system cost, notwithstanding a substantial haul from the Alabama, Virginia, or West Virginia fields to that State is involved. The portion of the road in Florida, it is claimed, performs no like service for other parts of the system.

From the foregoing it is apparent that the operating expenses allocated by defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it

seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida.

Appendix E is a computation to approximate the cost of transporting logs on the basis of system average costs per unit, applied to the average carload, tare weight, empty haul, and average distance that class of traffic is hauled in Florida. In this computation attempt has been made to meet as far as possible the criticisms of the defendant's cost evidence. For instance, deduction from the freight service operating expenses has been made for wharves and docks, maintenance and operation of floating equipment, and certain traffic expenses, which the defendant concedes [fol. 81] are not involved in handling logs. The deductions for these items include their proportion of the expenses for superintendence, as well as their proportion of the general expenses. The total freight service operating expenses amounted to $36,308,813 in 1929, and these deductions aggregate $1,281,069, leaving $35,027,744 as the remainder. This amount has been apportioned 70.3539 per cent to road or haulage expenses and 29.6461 per cent to yard or non-haulage expenses; these percentages being based upon the road and yard proportions of certain of the maintenance of way and structures and transportation expenses which are segregated in the accounts between these services in accordance with our rules. These are the proportions used by the witness for the Florida commission in his apportionment of the operating expenses between road or haulage and yard or non-haulage expenses. Applied to the net amount of the freight service operating expenses above, namely $35,027,744, these percentages result in road or haulage expenses of $24,643,384, and yard or non-haulage expenses of $10,384,360.

Giving consideration to the criticism that the traffic here involved is carload traffic, and that deduction should be made for the excess terminal expense attributable to handling less-than-carload freight over that attributable to carload traffic, the amount of $2,555,778 has been deducted from the non-haulage expenses, making the net amount of the non-haulage expenses $7,828,582 applicable to carload traffic. This deduction of $2,555,778 for platform and excess clerical expenses that are involved for l. c. l. freight, but not for carload freight, is an estimate based upon 75 per cent of the aggregate amount of the expenses for

Account 373, Station employees, and Account 376, Station supplies and expenses. As a substantial part of the expenses for station employees and station supplies and ex- [fol. 82] penses is obviously attributable to carload freight, the amount that should be deducted on account of l. c. l. freight was therefore estimated at 75 per cent of these expenses.

Dividing the total haulage expenses, $24,643,384, by the total number of gross ton-miles, 11,600,829,000, comprising both revenue and non-revenue or company freight, produced an average haulage expense of .21243 cent per gross ton-mile, revenue and non-revenue.

The statistics kept by defendant made no segregation of the loaded car-miles and the gross ton-miles between revenue and non-revenue freight, and the record does not show the number of tons and ton-miles of non-revenue freight. Dut to this fact it is not practicable to segregate the cost of transporting revenue freight on the basis of including therein the cost of transporting non-revenue or company freight, so that the costs hereinafter developed are understated on this account.

Based on total loaded car-miles (revenue and non-revenue), 209,835,784, and total revenue ton-miles, 3,281,770,000, there was an average of 15.6397 tons of revenue freight carried per loaded car-mile (revenue and non-revenue). Using this figure as the divisor, and the total tons of revenue freight carried, 18,951,802, as the dividend, there was approximately a total of 1,211,775 loaded cars of revenue and non-revenue freight carried. Based on total non-haulage expenses of $7,828,582, applicable to carload traffic, the average non-haulage expense was $6.46 per loaded car.

In 1929, U. S. Government taxes (corporation income) amounted to $570,076, and other than U. S. Government taxes (state taxes) to $5,669,924, or a total of $6,240,000 for the road as a whole. Based on these figures and total operating expenses of $53,431,589, freight and passenger, [fol. 83] taxes amounted to $0.11678 per dollar of operating expenses.

Property investment in 1929 amounted to $306,439,250, and 5¾ per cent interest thereon to $17,602,257. Based on total operating expenses of $53,431,589, freight and pas-

senger, interest on investment amounted to $0.32977 per dollar of operating expenses.

Based upon the foregoing the following is a summary of the computation of the cost of transporting the average car of logs in Florida the average distance of 81.36 miles:

| | | |
|---|---|---|
| Operating Expenses: | | |
| Haulage Expenses: 4,994 gross ton-miles x .21243 cent per gross ton-mile | $10.61 | |
| Non-Haulage Expenses: Average per loaded car | 6.46 | |
| Total operating expenses | | $17.07 |
| Taxes: | | |
| $17.07 (Oper. Exp.) x $0.11678 (Taxes per dollar of operating expense) | | 1.99 |
| Interest on Investment at 5¾ Per Cent: | | |
| $17.07 (Oper. Exp.) x $0.32977 (Interest per dollar of oper. exp.) | | 5.63 |
| Total cost per car | | $24.69 |
| Cost per 100 pounds | | 4.35 cents |
| Average revenue (Cummer scale) per car of logs for average haul 81.36 miles | | $15.12 |

The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation on the basis of average costs per unit for the system understates the cost of transporting logs in Florida, is that these average costs per unit do not include anything for joint facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting non-revenue or company freight.

[fol. 84] It is of course well known, as defendant concedes, that it is impossible on a system like the defendant's, engaged in the general transportation of all kinds of

freight and of passengers, to determine accurately the exact cost of transporting any one commodity. From the evidence submitted in this case, however, we are convinced that the defendant's revenue under the Cummer scale of $15.12 per car for transporting a car of logs weighing 56,754 pounds a distance of 81 miles, and transporting the empty car back, is insufficient under all the circumstances and conditions to cover the full cost of the service.

Conclusions and Findings

In determining whether the Cummer scale results in unjust discrimination against interstate commerce the fundamental question, in the language of the Supreme Court in Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 563, 568, and in Florida v. United States, 282 U. S. 194, 211, is whether the traffic moving on that scale pays "a fair proportionate share" of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant. The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its "fair proportionate share" of operation and maintenance alone.

In condemning the previous order in this case the Supreme Court did so because the ultimate finding of unjust discrimination was not properly supported by appropriate [fol. 85] subordinate findings, that is, there were no findings (1) as to the revenue which had been derived by the carrier from the traffic in question, (2) as to the revenues which could be reasonably expected under the increased rates, or (3) that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

While the record shows that defendant's Florida log traffic declined considerably after the increase of rates on

February 8, 1929, the record further shows that there was no substantial increase in the movement after the Cummer scale was restored on April 10, 1931. The depressed condition of the lumber industry has materially affected this log traffic since the latter part of 1930, and this depressed condition, in our opinion, has been and will be of far greater importance than the level of the Florida log rates in determining the extent of the movement in the immediate future at least. The record shows that during the period of approximately two years following the increase in the rates the total movement amounted to 18,602 cars. This total included 3,740 cars transported to Eastport, Lacoochee and Otter Creek in trainload movements that have ceased and will not be resumed. Under normal economic conditions it seems probable that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this two-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were [fol. 86] abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South.

The freight charges collected on the 18,602 cars above referred to aggregated $571,508.94, and if the Cummer scale had applied the charges would have been $281,225.75. The freight charges collected on the 3,740 cars referred to were $100,439.06, and if the Cummer scale had applied they would have been $48,286.75. On the 14,862 cars remaining after deducting the 3,740 cars from the total movement of 18,602, the freight charges collected were $471,069.88 ($571,508.94 minus $100,439.06) and if the Cummer scale had been applicable they would have been $232,939.00

($281,225.75 minus $48,286.75), or $238,130.88 less than those actually collected. Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue.

We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida [fol. 87] are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines.

We affirm the finding of division 4 that the interstate rates previously in force on logs over six feet in length, except walnut, cherry and cedar, in carloads, from points in northern Florida to destinations in Georgia were unreasonable to the extent that they exceeded those prescribed in the report of division 4, and we find that the rates therein prescribed, which are now in effect, are reasonable.

We further find that the intrastate rates on logs over six feet in length, except walnut, cherry and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in appendix F thereto, which are the rates found reasonable for interstate application from northern Florida to Georgia.

In the former report herein division 4 found that the Cummer scale resulted and would result in undue preference and advantage of shippers of intrastate traffic within the State of Florida and in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, as well as in unjust dis-

crimination against interstate commerce. The evidence introduced at the original hearing did not show any actual movement of logs from Florida to Georgia. The then existing interstate rates were more than twice as high as the Cummer scale. The evidence was conflicting as to whether [fol. 88] there were logs available in northern Florida that could be economically purchased and transported over defendant's lines to Georgia, but was not convincing that logs could not or would not so move if the interstate and intrastate rates were on the same level. As a result of the former order entered herein the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to about April 10, 1931. Notwithstanding this parity of rates, it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload. Whether an interstate movement from Georgia to Florida will develop after the interstate and intrastate rates are again put on a parity and the rate situation finally settled, it is impossible to say at the present time. Inasmuch as we find that the Cummer scale rates cause unjust descrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard. Any such undue prejudice as now exists because of the disparity in the intrastate and interstate rates will be removed by compliance with the order which we here enter for the purpose of removing the unjust discrimination against interstate commerce.

An appropriate order will be entered.

[fol. 89] APPENDIX A

Docket No. 18364

Letters from the Florida Railroad Commission Having Reference to the Establishment of the Cummer Scale—File #3685

Tallahassee, Oct. 9, 1914.

Railroad Commission, State of Florida

Subject: Logs—Rates to Milldale, Fla.

Mr. Jas. Menzies, F. T. M., Atlantic Coast Line R. R., Wilmington, N. C.

DEAR SIR: This office is in receipt of your Freight Tariff No. 3339, effective October 3, 1914, carrying rates on logs, C. L. between stations on the Atlantic Coast Line R. R. up to a distance of 150 miles, which tariff cancels your No. 3282, which carried rates on logs in trainloads of 28 cars.

I am directed by the Commissioners to call your attention to the paragraph in this paragraph which reads:

"When two or more cars are shipped from one station in one day by one shipper for delivery to one consignee at one destination these rates will be charged for an average carload weight of 50,000 pounds per car; excess of the average weight of 50,000 pounds per car will be charged for pro rata."

The Commissioners wish to say that they will not approve this tariff with the above paragraph incorporated therein, and will expect that you immediately re-publish the tariff with this paragraph eliminated.

When this is done, Freight Tariff No. 3339 will comply with the ideas of the Commissioners, in that the rates are stated per carload, and that they apply between all stations up to the given distance of 150 miles. The Commissioners wish it distinctly understood that this approval extends only to the method of stating the rates in this tariff and not to the rates themselves, and that in their opinion they are too low.

The rates carried in this tariff are such as might be deemed confiscatory, and there is little doubt in the minds of the Commissioners if they were to order such a scale of

rates that your company would contend that they amounted to confiscation and the taking of your property without the due process of law.

[fol. 90] To make such a scale of rates for the movement of logs in this State reduces the power of the Atlantic Coast Line R. R. Company to make other just and reasonable rates to be charged on all classes of freights that the public may be interested in. It also reduces the power of this Commission upon complaint and hearing hereafter to prescribe what might be just and reasonable rates to be charged for other freights when the entire revenues of the Atlantic Coast Line Railroad Company are to be taken into consideration. They amount practically to a discrimination against other classes of freight and all other people engaged in different lines of business.

You will recall that at the conference in Tallahassee on the 14th of July when the matter of withdrawing your log rates to Milldale, Fla., was under discussion the Commissioners advised you that they thought you should supplant the Milldale rates with your present rates on logs as they are being applied to other points in this State, which advice was based on the conviction that your log rates to Milldale were entirely too low.

The Commissioners regret that you have seen fit to publish these extremely low rates. There is no question but that the time will come when these barely remunerative rates will be used as the basis for opposition to the reduction of other rates, where perhaps a reduction might not only be justifiable but necessary, and therefore the Commissioners wish to impress upon you the fact that the low rates carried in your Freight Tariff #3339 were not only not ordered into effect or suggested by them, but were published by you in direct opposition to their advice and suggestions.

Yours very truly, (S.) J. H. Tench, Rate Expert.

[fol. 91] Railroad Commission, State of Florida

Tallahassee, Fla.,
August 18, 1915.

Mr. E. C. McLeod, Kendrick, Fla.

DEAR SIR: Replying to your letter of August 17th, with reference to the present rate on logs, carload, applicable

between stations on the Atlantic Coast Line R. R., for a distance of 150 miles and under.

Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission, nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April 1914, it came to the attention—of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class P rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

To be perfectly frank, in the opinion of the Commissioners, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holdings of the Cummer Lumber Co., largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company.

The Commissioners advised the Atlantic Coast Line R. R. Co. that they would have to cancel this tariff or make it applicable between all stations on its line in Florida, and that in any event they would have to cancel the application of the rate to logs in trainload lots, as the Commissioners would not recognize anything above the carload as a rate making unit.

Much to the surprise of the Commissioners, the Atlantic Coast Line corrected the tariff so as to make it applicable between all stations, and open to every one who had as much as one car of logs to ship. As soon as this was done, we advised the Atlantic Coast Line that we did not approve of these rates, and we also asked counsel for an opinion as to whether we had authority under the law to order the cancellation of a rate on the ground that in our opinion it was too low. We could get no encouragement from counsel that the Commissioners possessed such authority under the law. [fol. 92] As further information I enclose herewith a copy

of a communication that was addressed to Mr. Jas. Menzies, Freight Traffic Manager of the Atlantic Coast Line R. R., just after their decision to publish these rates as open rates on a mileage basis.

Should the railroad at any time make application to the Commissioners to be allowed to cancel this scale of rates, we would unquestionably allow them to be canceled, but as the matter now stands the move to cancel must be made by the carrier, as the Commission is without authority to order cancellation of a rate because it is too low.

So long as the present conditions prevail it would be to your advantage to locate your mill in Ocala, for the reasons set forth in your letter. The Commissioners regret this condition exists, and I feel sure that after you read the letter to Mr. Menzies, which is attached hereto, you will be convinced that these rates are in effect, not because of any action of the Commissioners, but in spite of their expressed objection.

The present Class P rates in this state, which apply on lumber, logs and wood, were put into effect by the Commissioners after an extended investigation, not only of the lumber industry in this state and adjoining territory, but also of the financial condition of the carriers, and we are convinced that these rates are just and reasonable as applicable to this traffic. If you will compare the rates on lumber in this state with the rates on lumber in Georgia, Alabama, South Carolina, North Carolina, Virginia and Tennessee, you will find that our rates are lower than in any of these states, in which states the conditions are practically the same, except in that in each state mentioned the density of population is greater than it is in Florida.

Yours very truly, (Signed) R. Hudson Burr, Chairman.

[fol. 93]

APPENDIX B

Docket No. 18364

Florida Intrastate Log Scales Compared with Various Interstate Scales in the South, (Reduced to Cents per 100 Pounds)

| | Florida Intrastate Scales | | | | Interstate Scales in the Southeast | | Interstate Scales in the Mississippi Valley | | |
|---|---|---|---|---|---|---|---|---|---|
| | Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 |
| Distance | Atlantic Coast Line* (other than cedar) | A. C. L. & S. A. L. (not over six feet in length) | Seaboard Air Line (other than cedar, and over six feet long) | Georgia Southern & Florida (other than cedar) | On A. C. L., S. A. L., Southern and as net transit rates on L. & N. | Single-line scale prescribed in 178 I. C. C. 671 to destinations in Tennessee | Net transit scale on I. C. and M. & O. (except cedar, cherry and certain foreign woods) | Local scale on Illinois Central (except cedar, walnut and cherry) | Local scale on Mobile & Ohio (except cedar, walnut, cherry and mahogany) |
| 5 miles and under | 1.71 | 2.14 | 2.81 | 1.95 | 2.5 | 3.5 | 2 | 3.5 | 4.5 |
| 10 miles and over 5 | 1.71 | 2.14 | 2.81 | 2.40 | 2.5 | 3.5 | 2 | 3.5 | 4.5 |
| 15 miles and over 10 | 1.71 | 2.37 | 2.81 | 3.16 | 3 | 4 | 2 | 4.5 | 6 |
| 20 miles and over 15 | 1.71 | 2.37 | 2.81 | 3.16 | 3 | 4 | 2.5 | 5 | 6 |
| 25 miles and over 20 | 1.71 | 2.75 | 3.37 | 3.66 | 3.5 | 4.5 | 2.5 | 6 | 7 |
| 30 miles and over 25 | 1.71 | 2.75 | 3.37 | 3.66 | 3.5 | 4.5 | 2.5 | 6 | 7 |
| 35 miles and over 30 | 1.71 | 2.88 | 3.94 | 3.83 | 4 | 5 | 3.5 | 6.5 | 7 |
| 40 miles and over 35 | 1.71 | 2.88 | 3.94 | 3.83 | 4 | 5 | 3.5 | 7 | 8.5 |
| 45 miles and over 40 | 2.10 | 3.25 | 3.94 | 4.33 | 4.5 | 5.5 | 4 | 8 | 8.5 |
| 50 miles and over 45 | 2.10 | 3.25 | 3.94 | 4.33 | 4.5 | 5.5 | 4.5 | 8.5 | 8.5 |
| 55 miles and over 50 | 2.10 | 3.50 | 4.50 | 4.60 | 4.5 | 6 | 4.5 | 8.5 | 8.5 |
| 60 miles and over 55 | 2.10 | 3.50 | 4.50 | 4.60 | 5 | 6 | 5 | 8.5 | 8.5 |
| 65 miles and over 60 | 2.30 | 3.75 | 4.50 | 5.00 | 5 | 6.5 | 5 | 9 | 8.5 |
| 70 miles and over 65 | 2.30 | 3.75 | 4.50 | 5.00 | 5 | 6.5 | 5 | 9 | 8.5 |
| 75 miles and over 70 | 2.30 | 4.00 | 5.06 | 5.33 | 5.5 | 7 | 6 | 10.5 | 8.5 |
| 80 miles and over 75 | 2.30 | 4.00 | 5.06 | 5.33 | 5.5 | 7 | 6 | 10.5 | 8.5 |
| 85 miles and over 80 | 2.30 | 4.25 | 5.63 | 5.66 | 5.5 | 7 | 6 | 10.5 | 8.5 |
| 90 miles and over 85 | 2.30 | 4.25 | 5.63 | 5.66 | 6 | 7.5 | 6.5 | 10.5 | 10.5 |
| 95 miles and over 90 | 2.60 | 4.50 | 6.19 | 6.00 | 6 | 7.5 | 6.5 | 11 | 10.5 |
| 100 miles and over 95 | 2.60 | 4.50 | 6.19 | 6.00 | 6 | 7.5 | 6.5 | 11 | 10.5 |
| 105 miles and over 100 | 2.80 | 4.62 | 6.19 | 6.16 | 6.5 | 8 | 6.5 | 11 | 10.5 |
| 110 miles and over 105 | 2.80 | 4.62 | 6.19 | 6.16 | 6.5 | 8 | 6.5 | 11 | 10.5 |
| 115 miles and over 110 | 3.20 | 5.00 | 6.19 | 6.66 | 6.5 | 8 | 6.5 | 11 | 10.5 |
| 120 miles and over 115 | 3.20 | 5.00 | 6.19 | 6.66 | 6.5 | 8 | 6.5 | 11 | 10.5 |
| 125 miles and over 120 | 3.20 | 5.13 | 6.75 | .... | 7 | 8.5 | 7 | 11.5 | 10.5 |
| 130 miles and over 125 | 3.20 | 5.13 | 6.75 | .... | 7 | 8.5 | 7 | 11.5 | 10.5 |
| 135 miles and over 130 | 3.40 | 5.13 | 6.75 | .... | 7 | 8.5 | 7 | 11.5 | 10.5 |
| 140 miles and over 135 | 3.40 | 5.13 | 6.75 | .... | 7 | 8.5 | 7 | 11.5 | 10.5 |
| 145 miles and over 140 | 3.40 | 5.50 | 7.31 | .... | 7.5 | 9 | 7 | 11.5 | 11.5 |
| 150 miles and over 145 | 3.40 | 5.50 | 7.31 | .... | 7.5 | 9 | 7 | 11.5 | 11.5 |
| 155 miles and over 150 | 3.40 | 5.75 | .... | .... | 7.5 | 9 | 7 | 11.5 | 11.5 |
| 160 miles and over 155 | 3.40 | 5.75 | .... | .... | 7.5 | 9 | 7 | 11.5 | 11.5 |
| 165 miles and over 160 | 3.70 | 6.25 | .... | .... | 8 | 9.5 | 8 | 12.5 | 11.5 |
| 170 miles and over 165 | 3.70 | 6.25 | .... | .... | 8 | 9.5 | 8 | 12.5 | 11.5 |
| 180 miles and over 170 | 8.33 | 6.25 | .... | .... | 8 | 9.5 | .... | .... | .... |
| 200 miles and over 180 | 8.33 | 6.25 | .... | .... | 8.5 | 10 | .... | .... | .... |
| 220 miles and over 200 | 8.67 | 6.50 | .... | .... | 9 | 10.5 | .... | .... | .... |
| 240 miles and over 220 | 9.00 | 6.75 | .... | .... | 9.5 | 11 | .... | .... | .... |
| 260 miles and over 240 | 9.17 | 6.87 | .... | .... | 10 | 11.5 | .... | .... | .... |
| 280 miles and over 260 | 9.50 | 7.12 | .... | .... | 10.5 | 12 | .... | .... | .... |
| 290 miles and over 280 | 9.67 | 7.25 | .... | .... | 11 | 12.5 | .... | .... | .... |
| 300 miles and over 290 | 9.83 | 7.37 | .... | .... | 11 | 12.5 | .... | .... | .... |

* Cummer scale to and including 170 miles; class P minimum 30,000 pounds for distances over 170 miles.

Note: On A. C. L. scale does not apply on cedar, cherry, mahogany, or walnut logs. (Scale runs to 550 miles.)

(Scale runs to 800 miles.)

Note: On I. C. does not apply on pine or walnut.

[fol. 94]

APPENDIX C

Docket No. 18364

Comparison of Cummer Scale with Intrastate Rates on Logs Between Points on the Atlantic Coast Line Railroad in Virginia, North Carolina, South Carolina, Georgia and Alabama. (Reduced to Cents per 100 Pounds)

| Miles | Cummer Scale (except cedar) | Virginia (except cedar, cherry, mahogany and walnut) | North Carolina | South Carolina | Georgia | | Alabama |
|---|---|---|---|---|---|---|---|
| | | | | | Transit | Local | |
| 5 | 1.71 | 2.5 | 1.8 | 2 | 1.83 | 3.05 | 2.5 |
| 7 | 1.71 | 2.5 | 1.8 | 2 | 1.83 | 3.05 | 2.5 |
| 10 | 1.71 | 2.5 | 1.8 | 2 | 2.11 | 3.51 | 2.5 |
| 12 | 1.71 | 3 | 1.8 | 2.5 | 2.11 | 3.51 | 3 |
| 15 | 1.71 | 3 | 2.13 | 2.5 | 2.11 | 4.17 | 3 |
| 17 | 1.71 | 3 | 2.13 | 2.5 | 2.5 | 4.17 | 3 |
| 20 | 1.71 | 3 | 2.13 | 2.5 | 2.63 | 4.38 | 3 |
| 22 | 1.71 | 3.5 | 2.13 | 3 | 2.63 | 4.38 | 3.5 |
| 25 | 1.71 | 3.5 | 2.62 | 3 | 2.88 | 4.79 | 3.5 |
| 27 | 1.71 | 3.5 | 2.62 | 3 | 2.88 | 4.79 | 3.5 |
| 30 | 1.71 | 3.5 | 2.62 | 3 | 3 | 5 | 3.5 |
| 32 | 1.71 | 4 | 2.62 | 3 | 3 | 5 | 4 |
| 35 | 1.71 | 4 | 2.88 | 3 | 3.25 | 5.41 | 4 |
| 37 | 1.71 | 4 | 2.88 | 3 | 3.25 | 5.41 | 4 |
| 40 | 1.71 | 4 | 2.88 | 3 | 3.38 | 5.61 | 4 |
| 42 | 2.1 | 4.5 | 2.88 | 3.5 | 3.38 | 5.61 | 4.5 |
| 45 | 2.1 | 4.5 | 2.88 | 3.5 | 3.5 | 5.91 | 4.5 |
| 47 | 2.1 | 4.5 | 3.25 | 3.5 | 3.5 | 5.91 | 4.5 |
| 50 | 2.1 | 4.5 | 3.25 | 3.5 | 3.5 | 5.91 | 4.5 |
| 52 | 2.1 | 4.5 | 3.25 | 3.5 | 3.5 | 5.91 | 4.5 |
| 55 | 2.1 | 4.5 | 3.5 | 3.5 | 3.63 | 6.04 | 4.5 |
| 57 | 2.1 | 5 | 3.5 | 4 | 3.63 | 6.04 | 5 |
| 60 | 2.1 | 5 | 3.5 | 4 | 4 | 6.66 | 5 |
| 62 | 2.3 | 5 | 3.5 | 4 | 4 | 6.66 | 5 |
| 65 | 2.3 | 5 | 4 | 4 | 4.13 | 6.87 | 5 |
| 67 | 2.3 | 5 | 4 | 4 | 4.13 | 6.87 | 5 |
| 70 | 2.3 | 5 | 4 | 4 | 4.25 | 7.08 | 5 |
| 72 | 2.3 | 5.5 | 4 | 5 | 4.25 | 7.08 | 5.5 |
| 75 | 2.3 | ... | 4.25 | 5 | 4.38 | 7.29 | 5.5 |
| 77 | 2.3 | ... | 4.25 | 5 | 4.38 | 7.29 | 5.5 |
| 80 | 2.3 | ... | 4.25 | 5 | 4.63 | 7.71 | 5.5 |
| 82 | 2.3 | ... | 4.25 | 5 | 4.63 | 7.71 | 5.5 |
| 85 | 2.3 | ... | 4.62 | 5 | 4.75 | 7.91 | 5.5 |
| 87 | 2.3 | ... | 4.62 | 5 | 4.75 | 7.91 | 6 |
| 90 | 2.3 | ... | 4.62 | 5 | 4.88 | 8.12 | 6 |
| 92 | 2.6 | ... | 4.62 | 5 | 4.88 | 8.12 | 6 |
| 95 | 2.6 | ... | 5 | 5 | 5.13 | 8.54 | 6 |
| 97 | 2.6 | ... | 5 | 5 | 5.13 | 8.54 | 6 |
| 100 | 2.6 | ... | 5 | 5 | 5.38 | 8.96 | 6 |
| 110 | 2.8 | ... | 5.38 | 6.5 | 5.5 | 9.17 | 6.5 |
| 120 | 3.2 | ... | 5.63 | 6.5 | 5.63 | 9.34 | 6.5 |
| 130 | 3.2 | ... | 6.13 | 7 | 5.75 | 9.58 | 7 |
| 140 | 3.4 | ... | 6.25 | 7 | 6 | 10 | 7 |
| 150 | 3.4 | ... | 6.75 | 8 | 6.25 | 10.41 | 7.5 |
| 160 | 3.4 | ... | 7.13 | 8 | 6.38 | 10.62 | 7.5 |
| 170 | 3.7 | ... | 7.38 | 8 | 6.5 | 10.83 | 8 |

[fol. 95]

APPENDIX D

Docket No. 18364

Comparison of Rates and Car-Revenue Under Rates Assailed on Logs with Important Commodities Moving Between North Florida and Georgia Points on the Atlantic Coast Line

| | Rates (in cents per 100 pounds) | | | | | | Revenue per car | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Logs | | Georgia-Florida interstate | | | | Logs | | Georgia-Florida interstate | | | |
| Miles | Interstate | Florida intrastate | Common brick | Gravel and sand | Lime | Cement | Interstate 55,000 lbs. | Florida intrastate 55,000 lbs. | Brick 66,580 lbs. | Gravel and sand 92,540 lbs. | Lime 50,000 lbs. | Cement 70,740 lbs. |
| 5 | 2.5 | 1.71 | 3 | 2.5 | 2.8 | 4 | $13.75 | $9.41 | $19.97 | $23.14 | $14.00 | $28.30 |
| 10 | 2.5 | 1.71 | 3 | 2.5 | 3.6 | 5 | 13.75 | 9.41 | 19.97 | 23.14 | 18.00 | 35.37 |
| 15 | 3 | 1.71 | 3.5 | 2.75 | 4 | 6 | 16.50 | 9.41 | 23.30 | 25.45 | 20.00 | 42.44 |
| 20 | 3 | 1.71 | 3.5 | 2.75 | 4.4 | 7 | 16.50 | 9.41 | 23.30 | 25.45 | 22.00 | 49.52 |
| 25 | 3.5 | 1.71 | 4 | 3 | 4.8 | 8 | 19.25 | 9.41 | 26.63 | 27.76 | 24.00 | 56.59 |
| 30 | 3.5 | 1.71 | 4 | 3 | 5.2 | 8 | 19.25 | 9.41 | 26.63 | 27.76 | 26.00 | 56.59 |
| 35 | 4 | 1.71 | 4.5 | 3.5 | 5.6 | 8.5 | 22.00 | 9.41 | 29.96 | 32.39 | 28.00 | 60.13 |
| 40 | 4 | 1.71 | 4.5 | 3.5 | 6 | 8.5 | 22.00 | 9.41 | 29.96 | 32.39 | 30.00 | 60.13 |
| 45 | 4.5 | 2.10 | 5 | 4 | 6.4 | 9 | 24.75 | 11.55 | 33.29 | 37.02 | 32.00 | 63.67 |
| 50 | 4.5 | 2.10 | | 4 | 6.8 | 9 | 24.75 | 11.55 | 33.29 | 37.02 | 34.00 | 63.67 |
| 55 | 4.5 | 2.10 | 5 | 4 | 7.2 | 9.5 | 24.75 | 11.55 | 33.29 | 37.02 | 36.00 | 67.20 |
| 60 | 5 | 2.10 | 5 | 4 | 7.6 | 9.5 | 27.50 | 11.55 | 33.29 | 37.02 | 38.00 | 67.20 |
| 65 | 5 | 2.30 | 5.5 | 4.5 | 8 | 10 | 27.50 | 12.65 | 36.62 | 41.64 | 40.00 | 70.74 |
| 70 | 5 | 2.30 | 5.5 | 4.5 | 8.4 | 10 | 27.50 | 12.65 | 36.62 | 41.64 | 42.00 | 70.74 |
| 75 | 5.5 | 2.30 | 6 | 4.5 | 8.8 | 10.5 | 30.25 | 12.65 | 39.95 | 41.64 | 44.00 | 74.28 |
| 80 | 5.5 | 2.30 | 6 | 4.5 | 8.8 | 10.5 | 30.25 | 12.65 | 39.95 | 41.64 | 44.00 | 74.28 |
| 85 | 5.5 | 2.30 | 6.5 | 5 | 9.2 | 11 | 30.25 | 12.65 | 43.28 | 46.27 | 46.00 | 77.81 |
| 90 | 6 | 2.30 | 6.5 | 5 | 9.2 | 11 | 33.00 | 12.65 | 43.28 | 46.27 | 46.00 | 77.81 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 95..... | 6 | 2.60 | 6.5 | 5 | 9.6 | 11.5 | 33.00 | 14.30 | 43.28 | 46.27 | 48.00 | 81.35 |
| 100..... | 6 | 2.60 | 6.5 | 5 | 9.6 | 11.5 | 33.00 | 14.30 | 43.28 | 46.27 | 48.00 | 81.35 |
| 110..... | 6.5 | 2.80 | 7 | 5.5 | 10 | 12 | 35.75 | 15.40 | 46.61 | 50.90 | 50.00 | 84.89 |
| 120..... | 6.5 | 3.20 | 7 | 5.5 | 10 | 12 | 35.75 | 17.60 | 46.61 | 50.90 | 50.00 | 84.89 |
| 130..... | 7 | 3.20 | 7 | 6 | 10.4 | 12.5 | 38.50 | 17.60 | 46.61 | 55.52 | 52.00 | 88.43 |
| 140..... | 7 | 3.40 | 7 | 6 | 10.4 | 12.5 | 38.50 | 18.70 | 46.61 | 55.52 | 52.00 | 88.43 |
| 150..... | 7.5 | 3.40 | 7.5 | 6 | 10.8 | 13 | 41.25 | 18.70 | 49.94 | 55.52 | 54.00 | 91.96 |
| 160..... | 7.5 | 3.40 | 7.5 | 6.5 | 10.8 | 13 | 41.25 | 18.70 | 49.94 | 60.15 | 54.00 | 91.96 |
| 170..... | 8 | 3.70 | 8 | 6.5 | 11.2 | 13.5 | 44.00 | 20.35 | 53.26 | 60.15 | 56.00 | 95.50 |

NOTE: Loadings shown are the average for the system in 1925. Average haul for system in May, 1926: logs, 109 miles; brick, 213 miles; sand and gravel, 120 miles; lime, 217 miles; cement, 243 miles.

[fol. 96] APPENDIX E

Docket No. 18364

Estimated Cost of Transporting Logs in Florida for Average Distance of 81.36 miles. Based on A.C.L. Average Costs per Unit for Calendar Year 1929 applied to the Average Units Involved in Hauling Logs in that State.

Basic Data

| | | | |
|---|---|---|---|
| Operating Expenses: | | | |
| Total Freight Service Operating Expenses | | | $36,308,813 |
| Expenses not involved in handling log traffic: | | | |
| Maintenance of Way and Structures: | | | |
| Acct. No. | | | |
| 241—Wharves and docks | | $135,980 | |
| 201—Superintendence (proportion)—5.334% x $135,980 | | 7,253 | |
| Maintenance of Equipment: | | | |
| 323 & 324—Floating equipment—Repairs and Depreciation | | 33,481 | |
| 301—Superintendence (proportion)—3.845% x $33,481 | | 1,287 | |
| Traffic: | | | |
| 352—Outside agencies | 488,740 | | |
| 353—Advertising | 4,579 | | |
| 354—Traffic associations | 46,802 | | |
| 356—Industrial and immigration bureaus | 16,637 | 556,758 | |
| 351—Superintendence (proportion)—81.94% x $556,758 | | 456,246 | |
| Transportation—Rail Line: | | | |
| 408—Operating floating equipment | | 33,543 | |
| 371—Superintendence (proportion)—4.392% x $33,543 | | 1,473 | |
| | | $1,226,021 | |
| General Expenses: | | | |
| Proportion applicable to above items—4.490% x $1,226,021 | 55,048 | | |
| Total expenses not involved | | | 1,281,069 |
| Net Freight Service Operating Expenses | | | $36,027,744 |

Apportionment between Haulage and Non-Haulage Expenses:

| Net Freight Service Operating Expenses apportioned: | Haulage Expenses | Non-Haulage Expenses |
|---|---|---|
| 70.3539% to Haulage and 29.6461% to Non-Haulage, based on proportions obtained from those of Maintenance of Way and Structures and Transportation—Rail Line accounts, which are segregated between Road or Haulage and Yard or Non-Haulage Expenses (See testimony witness Pettijohn—R.1465) | $24,643,384 | $10,384,360 |
| Deduction for excess terminal expense (platform and clerical) incurred for less-than-carload over that incurred for carload freight, estimated at 75% of Accounts 373—Station employees, and 376—Station supplies and expenses ($3,407,704 x 75%) | | 2,555,778 |
| Net amounts applicable to carload traffic | $24,643,384 | $7,828,582 |

| | | |
|---|---|---|
| Gross ton-miles | 11,600,829,000 | |
| Average Haulage Expense per Gross Ton-Mile | $.0021243 | |
| Revenue Ton-Miles | 3,281,770,000 | |
| Loaded Car-Miles (Revenue and Non-Revenue) | 209,835,784 | |
| Revenue Tons per Loaded Car-Mile (Revenue and Non-Revenue) | 15.6397 | |
| Total Revenue Tons Carried | 18,951,802 | |
| Total Loaded Cars Carried (Revenue and Non-Revenue) | 1,211,775 | |
| Average Non-Haulage Expense per Loaded Car | | $6.46 |

[fol. 97] Taxes:

| | | |
|---|---|---|
| U. S. Government (Corporation income) | $570,076 | |
| Other than U. S. Government (State taxes) | 5,669,924 | |
| Total Taxes | $6,240,000 | |
| Total Operating Expenses (Freight and Passenger) | 53,431,589 | |
| Taxes per dollar of Operating Expense | | $0.11678 |
| Interest on Investment at 5¾ per cent: | | |
| Property Investment as of December 31, 1929 | $306,439,250 | |
| 5¾ per cent Interest on Investment | 17,620,257 | |
| Interest on Investment per dollar of Operating Expense | | $0.32977 |
| Statistical Data for Log Traffic in Florida: | | |
| Average Revenue per Car under so-called Cummer Scale | $15.12 | |
| Average Distance Hauled—Miles | 81.36 | |
| Average Billing Weight—Pounds | 56754. | |
| Average Tare Weight of Car—Pounds | 33000. | |
| Average Tare Weight of Car—Empty Haul—Pounds | 33000. | |
| Gross Weight—Pounds | 122754. | |
| Gross Weight—Tons | 61.377 | |
| Gross Ton-Miles per car (61.377 gross tons x 81.36 Miles) | 4994. | |

Computation of Costs:

Estimated Cost Per Car of Hauling Logs in Florida based on A. C. L. R. R. Average Costs Per Unit:

| | | |
|---|---|---|
| Operating Expenses: | | |
| Haulage Expenses: 4,994 Gross Ton-Miles x $.0021243 Per G. T. Mile | $10.61 | |
| Non-Haulage Expenses: Average per Loaded Car | 6.46 | |
| Total Operating Expenses | | $17.07 |
| Taxes: $17.07 (Operating Expenses) x $0.11678 (Taxes per dollar of Operating Expenses) | | 1.99 |
| Interest on Investment at 5¾ Per Cent: | | |
| $17.07 (Operating Expenses) x $0.32977 (Interest per dollar of Operating Expenses) | | 5.63 |
| Total Cost Per Car | | $24.69 |
| Cost per 100 pounds | 4.35 cents | |
| Average Revenue (Cummer Scale) Per Car of Logs for Average Haul 81.36 miles | | $15.12 |

[fol. 98] APPENDIX F

Docket No. 18364

Minimum Rates Prescribed Herein on Florida Intrastate Log Traffic

| Distance | Rate[1] cents per 100 pounds |
|---|---|
| 10 miles and under | 2.5 |
| 20 miles and over 10 | 3 |
| 30 miles and over 20 | 3.5 |
| 40 miles and over 30 | 4 |
| 55 miles and over 40 | 4.5 |
| 70 miles and over 55 | 5 |
| 85 miles and over 70 | 5.5 |
| 100 miles and over 85 | 6 |
| 120 miles and over 100 | 6.5 |
| 140 miles and over 120 | 7 |
| 160 miles and over 140 | 7.5 |
| 170 miles and over 160 | 8 |

[1] Minimum 50,000 pounds.

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[fol. 99] Order

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 5th Day of July, A. D. 1932

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report on further hearing containing its findings of fact and conclusions thereon,

which said report is hereby referred to and made a part hereof:

It is ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs over six feet in length, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within and throughout the state of Florida for distances of 170 miles or less, which shall be the same as those set forth in Appendix F to the aforesaid report on further hearing.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

George B. McGinty, Secretary. (Seal.)

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[fol. 100] EXHIBIT "B" TO BILL OF COMPLAINT

Order

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 28th Day of July, A. D. 1932

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

It is ordered, That the third paragraph of the order heretofore entered in this proceeding on July 5, 1932, be, and it is hereby, amended so as to read as follows:

And it is further ordered, That this order shall become effective on or before September 15, 1932, and that defendant shall comply therewith upon not less than thirty days' notice to this commission and to the general public by filing and posting tariffs in the manner prescribed in section 6 of the interstate commerce act, and that this order shall remain in force until the further order of the Commission.

It is further ordered, That in all other respects the aforesaid order of July 5, 1932, shall remain in force and effect.

It is further ordered, That Appendix F to the report herein on further hearing be, and it is hereby, amended so as to provide that the rates named in said Appendix F shall be subject to a minimum weight of 40,000 pounds.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 101] Recital as to Exhibits Filed in Case No. 690

Exhibit No. 1, Consists of bound volume of printed transcript of Record of State of Florida et al. v. United States of America et al., Nos. 16, 17 and 18, October Term, 1930.

Exhibit No. 2, Certified copy of proceedings before I. C. C. Docket No. 18364.

Exhibits Nos. 3, 4, 5, 6, 7, 8 and 9 are attached.

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[fol. 102] Plaintiffs' Exhibit 3

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Copy of letter dated Washington, D. C., May 15, 1931, addressed to Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., and The Public Service Commission, Atlanta, Georgia, signed August G. Gutheim, and of enclosure referred to therein,

Copy of copy of letter dated Tallahassee, May 16, 1931, addressed to Mr. Carl H. Davis, Atty., A. C. L. Railroad Company, Wilmington, N. C., Mr. Robt. C. Alston, Alston, Alston, Foster & Moise, 1204-16 Citizens & Southern Bank Bldg., Atlanta, Georgia, and Mr. Frank W. Gwathmey, Spec. Counsel, 1210 Shoreham Bldg., Washington, D. C., signed Florida Railroad Commission, By Theo. T. Turnbull, Counsel,

Copy of letter dated Washington, D. C., May 27, 1931, addressed to Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., signed H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Norman, Counsel for various intervening Florida log shippers,

Copy of letter dated Tallahassee, Florida, May 29, 1931, addressed to Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., signed Florida Railroad Commission, T. T. Turnbull, Counsel,

Copy of letter dated Washington, D. C., June 2, 1931, addressed to George B. McGinty, Esq., Secretary, Interstate Commerce Commission, Washington, D. C., signed F. W. Gwathmey, Attorney for Atlantic Coast Line Railroad Company,

Copy of copy of letter dated Washington, June 3, 1931, addressed to Mr. T. T. Turnbull, Counsel, Florida Railroad Commission, Tallahassee, Fla., signed G. B. McGinty, Secretary,

Copy of copy of letter dated Washington, June 3, 1931, addressed to Mr. H. P. Adair, Atlantic National Bank Bldg., Jacksonville, Florida, Mr. C. E. Cotterill, 525 Grant Building, Atlanta, Ga., Mr. A. C. Gutheim, 712 Jackson Place, Washington, D. C., and Mr. J. V. Norman, 1506 Inter-Southern Bldg., Louisville, Ky., signed G. B. McGinty, Secretary, and

Copy of letter dated Washington, D. C., June 4, 1931, addressed to Hon. George B. McGinty, Secretary, Inter-
[fol. 103] state Commerce Commission, Washington, D. C., signed H. P. Adair, C. E. Cotterill, A. C. Gutheim, J. V. Norman, Counsel for various intervening Florida log shippers,

now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of September, A. D. 1932. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 104] August G. Gutheim, Attorney at Law, Number 712 Jackson Place, Washington, D. C.

May 15, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C. The Public Service Commission, Atlanta, Georgia.

In re I. C. C. Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company

Sirs: There is forwarded herewith copy of letter which counsel for various intervening log hippers in the State

of Florida have addressed to counsel for the Atlantic Coast Line Railroad Company, calling for certain information to be produced at the hearing in the above-entitled proceeding to be held in Jacksonville, Florida, on June 10, 1931.

Yours truly, August G. Gutheim.

[fol. 105] Law Offices, Knight, Adair, Cooper & Osborne

Atlantic National Bank Building,
Jacksonville, Florida,
May 14th, 1931.

Carl H. Davis, Esquire, Counsel, Atlantic Coast Line Railroad Company, Wilmington, North Carolina. Robert C. Alston, Esquire, Counsel, Atlantic Coast Line Railroad Company, Atlanta, Georgia. Frank W. Gwathmey, Esquire, Counsel, Atlantic Coast Line Railroad Company, Washington, D. C.

Re Interstate Commerce Commission Docket 18364, Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company

Gentlemen: We hereby request you to produce at the further hearing to be had in Jacksonville, Florida, on June 10th, 1931, at 10:00 o'clock A. M., in the above entitled cause, the following data:

(a). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, ark, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Georgia, during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

[fol. 106] (b). A statement, supported by individual car record movements, showing by classes of logs, except cedar

logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad, during the following periods:

February 1, 1926, to January 31st, 1927.
February 1, 1927, to January 31st, 1928.
February 1, 1928, to January 31st, 1929.
February 1, 1929, to January 31st, 1930.
February 1, 1930, to January 31st, 1931.

(c). A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), interstate as well as intrastate over all or any parts of its railway lines wherever situate during the years ending respectively January 31st, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (c) except by calendar years, then please furnish that data for the calendar years 1926, 1927, 1928, 1929 and 1930.

Please inform us whether or not you will furnish the above data at the hearing.

A copy of this letter is being furnished the Interstate Commerce Commission and the Georgia Public Service Commission.

Very truly yours, H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Morman, Counsel for Various Florida Log Shippers, Interveners.

HPA/fgk.

[fol. 107] Railroad Commission, State of Florida

Tallahassee, May 16, 1931.

Mr. Carl H. Davis, Atty., A. C. L. Railroad Company, Wilmington, N. C. Mr. Robt. C. Alston, Alston, Alston,

Foster & Moise, 1204-16 Citizens & Southern Bank Bldg., Atlanta, Georgia. Mr. Frank W. Gwathmey, Spec. Counsel, 1210 Shoreham Bldg., Washington, D. C.

In re I. C. C. Docket No. 18364, Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company

GENTLEMEN: We hereby request you to produce at the further hearing to be had at Jacksonville, Florida, on June 10th, 1931, at 10:00 o'clock A. M., in the above entitled cause, the following data:

(a) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Georgia, during the following periods:

February 1, 1926, to January 31, 1927.
February 1, 1927, to January 31, 1928.
February 1, 1928, to January 31, 1929.
February 1, 1929, to January 31, 1930.
February 1, 1930, to January 31, 1931.

[fol. 108] (b) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad, during the following periods:

February 1, 1926, to January 31, 1927.
February 1, 1927, to January 31, 1928.
February 1, 1928, to January 31, 1929.
February 1, 1929, to January 31, 1930.
February 1, 1930, to January 31, 1931.

(c) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad in the State of Florida and destined to points of origin on the line of some other carrier in the State of Florida.

(d) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating on the line of another carrier within the State of Florida but destined to a point in the State of Florida upon the line of your railroad.

(e) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating and terminating at points in the State of Florida off your line of railroad but which have been transported over your lines as a connecting line carrier.

[fol. 109] (f) A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) interstate as well as intrastate over all or any parts of its railway lines wherever situate during the years ending respectively January 31, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (f) except by calendar years, then please furnish that data for the calendar years 1926, 1927, 1928, 1929 and 1930 respectively.

Please inform us whether or not you will furnish the above data at the hearing.

A copy of this letter is being furnished the Interstate Commerce Commission and the Georgia Public Service Commission.

Very truly yours, Florida Railroad Commission, by Theo. T. Turnbull, Counsel.

[fol. 110] August G. Gutheim, Attorney at Law, Number 712 Jackson Place, Washington, D. C.

May 27, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

In re I. C. C. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company

DEAR SIR: The above-entitled proceeding is set for further hearing before Examiner Hoy at Jacksonville, Florida on June 10 next. The original complaint of the Georgia Public Service Commission in this proceeding attacked the lawfulness of interstate rates on logs from origins in northern Florida to destinations in Georgia. Violations of Sections 1, 3, and 13 were alleged, bringing into the case intrastate rates on logs within Florida. The report and order of the Commission, Georgia P. S. Commission v. A. C. L. R. R. Co., 146 I. C. C. 717, were found to be unlawful by the Supreme Court of the United States in Florida, et al. v. United States, 282 U. S. 194, following which a permanent injunction against the same was entered by the District Court for the Northern District of Georgia, Atlanta Division.

The Commission's order setting the case for further hearing followed. Thereupon counsel for the various intervening Florida log shippers requested the one defendant, the Atlantic Coast Line Railroad Company, under date of May 14, 1931, to prepare and to produce at the further hearing the following data:

(a). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line

of railroad at points in the State of Florida and destined to points in the State of Georgia, during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

[fol. 111] (b). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs, (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad, during the following periods:

February 1, 1926 to January 31st, 1927.
February 1, 1927 to January 31st, 1928.
February 1, 1928 to January 31st, 1929.
February 1, 1929 to January 31st, 1930.
February 1, 1930 to January 31st, 1931.

(c). A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), interstate as well as intrastate over all or any parts of its railway lines wherever situate during the years ending respectively January 31st, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (c) except by calendar years, then please furnish that data for the calendar years 1926, 1927, 1928, 1929 and 1930."

A copy of our communication to the carrier was mailed to you and to complainant under date of May 15, 1931.

Under date of May 21, 1931, we are in advice from Mr. Frank W. Gwathmey, Special Counsel for the defendant in this matter, as follows:

"While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived therefrom, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation as between the several classes or length of logs handled. Neither during the periods referred to, nor at the present time, is it the practice of shippers to indicate in their bills of lading the class of logs offered for shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

[fol. 112] When this complaint was first filed the Atlantic Coast Line Railroad Company, defendant, denied the allegations of unlawfulness and prayed that the complaint be dismissed. The developments in the proceedings since would seem to indicate that the Atlantic Coast Line no longer assumes the position of a defendant but stands with the complainant.

In view of the allegations of violation of Sections 1, 3, and 13 of the Act, it would seem that there should be of record before the Commission in the further hearing all of the data which these intervening Florida log shippers requested the carrier to produce.

In view of the carrier's refusal to furnish the information requested, counsel for the various Florida log shippers respectfully request that the Commission issue its subpoena duces tecum upon the Atlantic Coast Line Railroad Company requiring the carrier to produce the data requested as above set forth at the further hearing in this proceeding at Jacksonville, Florida on June 10, 1931.

Yours truly, (S'g'n) H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Norman, Counsel for Various Intervening Florida Log shippers.

Copy for Messrs. Robert C. Alston, Carl H. Davis, Frank W. Gwathmey.

[fol. 113] August G. Gutheim, Attorney at Law, Number 712 Jackson Place, Washington, D. C.

Tallahassee, Florida,

May 29, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

In re I. C. C. Docket 18364, Georgia P. S. Commission v. A. C. L. R. R. Co.

DEAR SIR: The above-styled proceeding is set for further hearing at Jacksonville, Fla. on June 10 before Examiner Hoy. The original complaint in this case was brought by the Georgia Public Service Commission, attacking the lawfulness of interstate rates on logs from origins in northern Florida to destinations in Georgia; the complaint alleged violations of Sections 1, 3, and 13, thus bringing into the case intrastate rates on logs within the State of Florida. The report and order of the Commission, Georgia P. S. Commission v. A. C. L. R. R. Co., 146 I. C. C. 717, were found to be unlawful by the Supreme Court of the United States in Florida v. United States, 282 U. S. 194. A permanent injunction against the order of the Commission was subsequently entered by the District Court for the Northern District of Georgia, Atlanta Division. The order of the Interstate Commerce Commission setting the case for further hearing followed.

Thereupon the Florida Railroad Commission, an intervener, addressed the Atlantic Coast Line Railroad Company, defendant, requesting it to prepare and produce at the further hearing the following data:

(a). A statement supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating on your line of railroad at points in the State of Florida and destined to

points in the State of Georgia, during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

(b). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges [fol. 114] applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

(c). A statement supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad in the State of Florida and destined to points of origin on the line of some other carrier in the State of Florida.

(d). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on the line of another carrier within the State of Florida but destined to

a point in the State of Florida upon the line of your railroad.

(e). A statement supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating and terminating at points in the State of Florida off your line of railroad but which have been transported over your lines as a connecting line carrier.

(f). A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) interstate as well as intrastate overall or any parts of its railway lines wherever situate during the years ending respectively January 31st, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, and January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (f) except by calendar years, then please furnish this data for the calendar years 1926, 1927, 1928, 1929, and 1930 respectively."

Items (a), (b) and (f) are the identical data requested also by the various intervening Florida log shippers.

Under date of May 21, Mr. Frank W. Gwathmey, Special Counsel for the Atlantic Coast Line, addressed me jointly with Messrs. Knight, Odair, Cooper & Osborne, one of counsel for the Florida log shippers, as follows:

[fol. 115] "While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived thereon, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation of the interstate and intrastate movements, nor of the separation as between the several classes, or length of logs handled. Neither during the periods referred to, nor at the present time, is it the practice of shippers to indicate in their bills of lading the class

of logs offered for shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

Because of the allegations in the complaint of violation of Sections 1 and 3, and particularly also, of Section 13, of the Interstate Commerce Act, it would seem to us that there should be submitted at the further hearing all of the data which we have asked the Atlantic Coast Line to produce, and which they have declined to furnish.

In view of the carrier's refusal to furnish the information requested, the Florida Railroad Commission respectfully requests that the Interstate Commerce Commission issue its subpoena duces tecum upon the Atlantic Coast Line Railroad Company requiring the carrier to produce the data outlined above at the further hearing in this proceeding at Jacksonville, Florida, on June 10, 1931.

Yours truly, Florida Railroad Commission, By T. T. Turnbull, Counsel.

Copy for Messrs. Robert C. Alston, Frank W. Gwathmey, Carl D. Davis.

Copy.

[fol. 116] Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Ocean Steamship Company of Savannah, Florida East Coast Railway Company, Merchants and Miners Transportation Co., Clinchfield Railroad Company, Charleston and Western Carolina Railway Co., Eastern Steamship Lines, Inc.

Seaboard Air Line Railway Company, Richmond, Fredericksburg & Potomac R. R. Co., Nashville, Chattanooga & St. Louis Railway, Clyde Steamship Company, Atlanta and West Point Railroad Company, The Western Railway of Alabama, Georgia Railroad.

Frank W. Gwathmey, special counsel; Henry Thurtell, assistant special counsel, Charles P. Reynolds, attorney; Richard B. Gwathmey, attorney.

Office of Special Counsel, Interstate Commerce Cases,
1210 Shoreham Building, Washington, D. C.

Refer to File No. 1590

June 2, 1931. fwg.

I. C. C. Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

George B. McGinty, Esq., Secretary,
Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: I have copy of a letter to you dated May 27th from counsel for certain shipper interveners in the above case in which the Commission is requested to issue its subpoena duces tecum to require the Atlantic Coast Line Railroad Company to produce certain data at the hearing set for June 10, 1931.

Your attention is respectfully directed to the statement in my letter of May 21st (quoted in the letter of May 27th) that the Atlantic Coast Line Railroad Company has no records from which this data can be compiled; also to the fact that the subpoena requested by opposing counsel is not for the production of any document or paper which is now in the defendant's possession, but it is sought rather to compel the defendant through subpoena to prepare and compile certain statements; and in addition, that the request relates to a miscellaneous mass of information, very large in volume, with no indication whatever as to the extent, if any, of the relevancy thereof to any issue in the proceeding.

Under these conditions, it is respectfully urged on behalf of the defendant that no subpoena should be issued.

[fol. 117] Very truly yours, (S.) F. W. Gwathmey, Attorney for Atlantic Coast Line Railroad Company.

Copy to August T. Gutheim, Esq., 712 Jackson Place, Washington, D. C. Messrs. Knight, Adair, Copper & Os-

borne, Atlantic National Bank Building, Jacksonville, Fla. Charles E. Cotterill, Esq., Grant Building, Atlanta, Ga. Theo. T. Turnbull, Esq., c/o Florida Railroad Commission, Tallahassee, Fla. J. V. Norman, Esq., Inter-Southern Louisville, Ky.

[fol. 118] EJH:JPM.

Interstate Commerce Commission, Washington

June 3, 1931.

Mr. T. T. Turnbull, Counsel, Florida Railroad Commission, Tallahassee, Fla.

DEAR SIR: This is in response to your letter of May 29th relative to Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company. You state therein that on May 14th you requested defendant to prepare and produce at the further hearing on June 10, 1931, certain data, consisting of statements, supported by individual car record movements, showing by classes of logs, by points of origin and destination, and by rates, number of cars, total tonnage, and charges applicable on logs, except cedar logs (and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length) originating on defendant's line in Florida and destined to points in Georgia during certain periods, showing similar information as to such logs originating at and destined to points on defendant's line in Florida during the same periods, and showing the gross earnings of defendant for the transportation of such logs over all of its lines during certain periods. You also quote from the reply of Mr. Frank W. Gwathmey, counsel for defendant, in which he states that defendant's records have not been kept in such form as would enable it to furnish the statements which you requested. You further state that it would seem to you that all of the data which you requested defendant to produce should be of record in this case, and request, in view of defendant's refusal to furnish same, that the Commission issue its subpœna duces tecum upon defendant requiring it to produce the data requested at the further hearing on June 10th.

Your request is for a subpœna duces tecum to produce certain data, consisting of certain statements to be com-

piled by defendant, which data seems to you should be of record in this proceeding but which defendant states it cannot furnish. You do not specify just what books, papers, or documents of defendant you desire it to produce at the further hearing, as required by rule XII (b) of the Rules of Practice. That rule also provides that there should be a showing that the books, papers or documents sought will be of service in the determination of the proceeding. There is no such showing in your letter of May 29th.

It seems apparent, as stated by Mr. Gwathmey, that even if the statements which you desire could be compiled from the original records of defendant, there is not sufficient time within which it could be done before the further hear-
[fol. 119] ing on June 10th. Mr. Gwathmey states that defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary.

Respectfully, G. B. McGinty, Secretary.

[fol. 120] EJH:JPM.

Interstate Commerce Commission, Office of the Secretary, Washington

George B. McGinty, Secretary.

June 3, 1931.

Mr. H. P. Adair, Atlantic National Bank Bldg., Jacksonville, Florida. Mr. C. E. Cotterill, 525 Grant Building, Atlanta, Ga. Mr. A. C. Gutheim, 712 Jackson Place, Washington, D. C. Mr. J. V. Norman, 1506 Inter-Southern Bldg., Louisville, Ky.

DEAR SIRS: This is in response to your joint letter of May 27th relative to Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company. You state therein that on May 14th you requested defendant to prepare and produce at the further hearing on June 10, 1931, certain data, consisting of statements, supported by individual car record movements, showing

by classes of logs, by points of origin and destination, and by rates, number of cars, total tonnage, and charges applicable on logs, except cedar logs (and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length) originating on defendant's line in Florida and destined to points in Georgia during certain periods, showing similar information as to such logs originating at and destined to points on defendant's line in Florida during the same periods, and showing the gross earnings of defendant for the transportation of such logs over all of its lines during certain periods. You also quote from the reply of Mr. Frank W. Gwathmey, counsel for defendant, in which he states that defendant's records have not been kept in such form as would enable it to furnish the statements which you requested. You further state that it would seem to you that all of the data which you requested defendant to produce should be of record in this case, and request, in view of defendant's refusal to furnish same, that the commission issue its subpœna duces tecum upon defendant requiring it to produce the data requested at the further hearing on June 10th.

Your request is for a subpœna duces tecum to produce certain data, consisting of certain statements to be compiled by defendant, which data seems to you should be of record in this proceeding but which defendant states it [fol. 121] cannot furnish. You do not specify just what books, papers, or documents of defendant you desire it to produce at the further hearing, as required by rule XII (b) of the Rules of Practice. That rule also provides that there should be a showing that the books, papers or documents sought will be of service in the determination of the proceeding. There is no such showing in your letter of May 27th.

It seems apparent, as stated by Mr. Gwathmey, that even if the statements which you desire could be compiled from the original records of defendant, there is not sufficient time within which it could be done before the further hearing on June 10th. Mr. Gwathmey states that defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary.

Respectfully, G. B. McGinty, Secretary.

Copies to: Mr. Carl H. Davis, Counsel, Atlantic Coast Line Railroad Company, Wilmington, N. C. Mr. Robert C. Alston, Counsel, Atlantic Coast Line Railroad Company, Atlanta, Ga. Mr. Frank W. Gwathmey, Counsel, Atlantic Coast Line Railroad Company, Washington, D. C.

[fol. 122] August G. Gutheim, Attorney At Law, Number 8 Jackson Place

Washington, D. C., June 4, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

In re I. C. C. 18364, Georgia Public Service Commission v. Atlantic Coast Line R. R. Co.

DEAR SIR: With reference to your letter of June 3 addressed jointly to Messrs. H. P. Adair, C. E. Cotterill, J. C. Norman and myself in the matter of our request in joint letter of May 27 for subpœna duces tecum on proper officers of the Atlantic Coast Line to produce certain data outlined therein for the further hearing in the above-entitled proceeding at Jacksonville, Florida on June 10 before Examiner Hoy.

Counsel for these intervening Florida log shippers are without information as to what specific books or papers or documents of the defendant, Atlantic Coast Line Railroad Company contain the data which is sought. That is information which is peculiarly in the hands of the carrier. Moreover, the defendant Atlantic Coast Line Railroad Company has not informed us as to the nature of the "certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company and the revenue derived therefrom" and we are therefore unable to advise the Commission whether it will be sufficiently complete and satisfactory.

We are however, still of the opinion that the data asked for in our letter of May 27 is necessary, and we respectfully renew our request for the issuance of subpœna duces tecum upon the proper officers of the Atlantic Coast Line for same, to cover all books, documents, and other papers which contain the data required. Our letter of May 27, page 3, first two paragraphs, outlines the reasons why the

data sought would be of service in the determination of the proceeding.

In Florida, et al. v. United States, 282 U. S. 194, the Supreme Court found unlawful the order of the Interstate Commerce Commission entered in the above-entitled proceeding, now set for further hearing. Violations of Sections 1, 3, and 13 of the Interstate Commerce Act were alleged in the original complaint, and of course, are again in issue in the further hearing. Developments since the original complaint was filed point to the fact that the defendant Atlantic Coast Line will stand with complainant. In Florida, et al. v. United States, supra, the Supreme Court, in discussing the Section 13 aspect of the case, said:

[fol. 123] "* * * it must appear that there are findings, supported by evidence, of the essential facts as to *the particular traffic and revenue*, and the effect of the interstate rates * * * upon the income of the carrier * * *." (Italics ours.)

And again—"In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other."

And also that in considering the authority to change intrastate rates in the interest of the carrier's revenue, "the question is that of the relation of rates to income."

We therefore respectfully submit that the data which these intervening Florida log shippers seek through the issuance of a subpœna duces tecum is of vital importance in the proper determination of this proceeding by the Commission, and urge that the defendant Atlantic Coast Line Railroad Company be required to produce same.

If such data is not furnished at the hearing now set for Jacksonville June 10, we shall reserve the right to ask that the Commission give this request further consideration, to the end that this information be placed before the Commission before the case is finally presented for a determination of the issues raised.

Yours truly, (S'g'n) H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Norman, Counsel for Various Intervening Florida Log Shippers.

Copy for Messrs. Robert C. Alston, Carl H. Davis, Frank W. Gwathmey.

[fol. 124] PLAINTIFF'S EXHIBIT 4

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of order of the Commission entered May 19, 1914, Classification of Operating Revenues and Operating Expenses of Steam Roads, prescribed by the Interstate Commerce Commission, in accordance with Section 20 of the Act to Regulate Commerce, effective July 1, 1914; of orders of the Commission entered June 2, 1924, July 25, 1925, April 18, 1928, and November 23, 1928, In the Matter of a Uniform System of Accounts to be kept by Steam Roads; and of order of the Commission entered June 2, 1924, In the Matter of the Recovery and Payment of Excess Net Railway Operating Income Under the Provisions of Section 15a of the Interstate Commerce Act, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 6th day of September, A. D. 1932.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission. 1887.)

# CLASSIFICATION
OF
# OPERATING REVENUES AND OPERATING EXPENSES
OF
# STEAM ROADS

PRESCRIBED BY THE
INTERSTATE COMMERCE COMMISSION
IN ACCORDANCE WITH SECTION 20 OF THE
ACT TO REGULATE COMMERCE

---

ISSUE OF 1914

---

*Effective on July 1, 1914*

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

# CLASSIFICATION

OF

# OPERATING REVENUES AND OPERATING EXPENSES

OF

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1914

## THE INTERSTATE COMMERCE COMMISSION.

JAMES S. HARLAN, *of Illinois.*
JUDSON C. CLEMENTS, *of Georgia.*
EDGAR E. CLARK, *of Iowa.*
CHARLES C. MCCHORD, *of Kentucky.*
BALTHASAR H. MEYER, *of Wisconsin.*
HENRY C. HALL, *of Colorado.*
WINTHROP M. DANIELS, *of New Jersey.*
GEORGE B. MCGINTY, *Secr*

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## ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 19th day of May, 1914.

The subject of a Uniform System of Accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

*It is ordered*, That the Classification of Operating Revenues and Operating Expenses of Steam Roads and the text pertaining thereto, embodied in printed form to be hereafter known as Issue of 1914, a copy of which is now before this Commission, be, and is hereby, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Division of Carriers' Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

*It is further ordered*, That the said Classification of Operating Revenues and Operating Expenses of Steam Roads, with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by rail (exclusive of electric railways) subject to the provisions of the Act to Regulate Commerce as amended, in the keeping and recording of their operating revenue and operating expense accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating revenue and operating expense accounts in conformity therewith; and that a copy of the said issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

*It is further ordered*, That any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account established in the said issue or may make assignment of the amount credited or charged to any such primary account to operating divisions, to its individual lines, or to States: *Provided, however*, That such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier do not impair the integrity of the accounts hereby prescribed: *And provided also*, That a list of such subprimary accounts set up or such assignments made be first filed in the office of the Division of Carriers' Accounts, subject to disapproval by the Commission.

*It is further ordered*, That in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said issue becomes effective, keep and maintain, in addition to the operating revenue and operating expense accounts hereby prescribed, such portion or portions of its present accounts with respect to operating revenue and operating expense items as may be deemed desirable by any such carrier or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

*It is further ordered*, That, unless otherwise ordered, any such carrier or any receiver or operating trustee of any such carrier may keep any temporary or experimental accounts for revenues or expenses, the purpose of which shall be to develop the efficiency of operations: *Provided, however*, That such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed.

*It is further ordered*, That July 1, 1914, be, and is hereby, fixed as the date on which the said issue of the Classification of Operating Revenues and Operating Expenses of Steam Roads shall become effective.

By the Commission:

GEORGE B. MCGINTY,
*Secretary.*

[SEAL.]

# INTRODUCTORY LETTER.

INTERSTATE COMMERCE COMMISSION,
DIVISION OF CARRIERS' ACCOUNTS,
*Washington, May 19, 1914.*

TO ACCOUNTING OFFICERS OF STEAM RAILWAYS:

This Classification of Operating Revenues and Operating Expenses supersedes the Classification of Operating Revenues, First Issue, effective July 1, 1907, and the Supplement thereto, effective July 1, 1908; the Classification of Operating Expenses, Third Revised Issue, effective July 1, 1907, and the Supplement thereto, effective July 1, 1908; and the Classification of Revenues and Expenses for Outside Operations, First Issue, effective July 1, 1908. It also supersedes conflicting instructions contained in Accounting Bulletin No. 8.

Accounts are provided in this classification for the revenues and expenses of operations which heretofore have been classed as auxiliary or outside operations. The purpose in merging these accounts has been to secure a statement of revenues and expenses in connection with the operation of all physical property the cost of which is includible in the accounts for investment in road and equipment.

The accounts for maintenance of physical property have been arranged to correspond with those for the investment in such property. Depreciation accounts have been provided for the current depreciation of fixed improvements, although until further directed the recognition in operating expenses of current depreciation of fixed improvements is optional with the carrier. It is provided that organization and general administration expenses directly assignable to investments in stocks, bonds, and other securities shall be excluded from the accounts of this classification and included in income account No. 549, "Maintenance of investment organization."

The general and special instructions contain a comprehensive statement of the principles underlying the classification, indicating generally the application of the accounting rules. The attention of accounting officers is called to the importance of requiring all employees who are assigned to accounting work in connection with operating revenues and operating expenses to familiarize themselves thoroughly with these instructions.

In the preparation of the revision of the accounting rules contained in this and other classifications for steam roads, which are concurrently issued, the Commission has had the cooperation of the Association of American Railway Accounting Officers and of its Standing Committee on Corporate, Fiscal, and General Accounts.

The classification, in tentative form, has been presented for criticism and suggestions to the chief accounting officer of each railway and to the railway commissions of the several States. All suggestions received from such parties have been given careful consideration, and many of them have been incorporated in the classification as here issued.

FRED W. SWENEY,
*Chief Examiner of Accounts.*

# GENERAL INSTRUCTIONS.

The carrier's records shall be kept with sufficient particularity to show fully the facts pertaining to all entries made in the accounts provided herein for railway operations. Where the full information is not recorded in the general books, the entries therein shall be supported by other records in which the full details shall be shown. Such general book entries shall contain sufficient reference to the detail records to permit ready identification, and the detail records shall be filed in such manner as to be readily accessible for examination by representatives of the Interstate Commerce Commission.

1. OPERATING ACCOUNTS.—The accounts of this classification are designed to show the revenues and expenses (including the maintenance of the facilities used) of the carrier's railway operations, including rail-line transportation, water-line transportation, if any, and services incident to transportation.

*Transportation* includes the receipt, conveyance, and delivery of traffic.

*Rail-line transportation* includes not only the conveyance of traffic over tracks, but also the necessary conveyance by water transfers (ferriage, lighterage, and floatage) either between track terminals or between track terminals and points not reached by tracks, such as the water transfers at present operated by carriers having track terminals at New York harbor, and the water transfers at present operated by the—

Ann Arbor Railroad Company between Frankfort, Mich., and Manistee, Mich., Menominee, Mich., Kewaunee, Wis., and Manitowoc, Wis.

Atchison, Topeka & Santa Fe Railway Company between Ferry Point, Cal., and San Francisco, Cal.

Morgan's Louisiana & Texas Railroad & Steamship Company across the Mississippi River near New Orleans, La.

Nashville, Chattanooga & St. Louis Railway between Incline, Ala., and Gunters Landing, Ala.

New York, Philadelphia & Norfolk Railroad Company between Cape Charles, Va., and Norfolk, Va.

Southern Railway Company between Pinners Point, Va., and Norfolk, Va.

Southern Pacific Company between Oakland, Cal., and San Francisco, Cal.

*Water-line transportation* includes the transportation of local traffic from port to port, and the transportation of both local and interline rail and water-line traffic from port to port, such as the water-line transportation operations at present conducted by the—

Baltimore, Chesapeake & Atlantic Railway Company on Chesapeake Bay and the Potomac River.

Central Railroad Company of New Jersey between New York, N. Y., and Atlantic Highlands, N. J.

Erie Railroad Company between Buffalo, N. Y., and Manitowoc, Wis., Milwaukee, Wis., and Chicago, Ill.

Southern Pacific Company between New York, N. Y., and New Orleans, La.; between New York, N. Y., and Galveston, Tex.; between New Orleans, La., and Habana, Cuba; and between San Francisco, Cal., and Sacramento, Cal.

Incidental revenues from meals, liquors, books, periodicals, etc., sold on vessels, have, because of established practice, been provided for in the primary accounts included in revenue general account II, Transportation—Water Line.

Carriers are at liberty to subdivide the general and primary accounts here given, but if this option be exercised a statement of the accounts adopted shall be filed in the office of the Division of Carriers' Accounts of the Interstate Commerce Commission.

*The carrier* means the accounting carrier, except when otherwise specifically indicated.

2. UNAUDITED ITEMS AFFECTING OPERATING ACCOUNTS.—When for any cause the amount of any item affecting operating revenues or operating expenses can not be accurately determined in time for inclusion in the accounts of the month in which the transaction occurs, the amount of the item shall be estimated and in such form charged or credited to operating accounts and credited to balance-sheet account No. 778, "Other unadjusted credits," or charged to balance-sheet account No. 727, "Other unadjusted debits," as may be appropriate, the necessary adjustments being made later when the item is audited. The carrier is not required to anticipate minor items which would not appreciably affect the operating accounts.

3. DELAYED ITEMS.—When no provision has been made through entries in the accounts of these classifications for anticipating delayed items chargeable or creditable to the accounts herein, and the amount of any such item is relatively so large that its inclusion in the accounts for a single year would seriously distort those accounts, the carrier, if so authorized upon application to the Interstate Commerce Commission, shall distribute to Profit and Loss so much of the amount as may be authorized.

The carrier shall file with the Commission for approval the full particulars concerning each such item and the reasons which, in its judgment, indicate the propriety of such accounting.

When the amount of a delayed item is relatively so large that its inclusion in the accounts for a single month will seriously distort those accounts it may be distributed in equal monthly charges to the remaining months of the current fiscal year.

*Delayed items* are items representing transactions which occurred before the current fiscal year.

4. MISCELLANEOUS OPERATIONS.—The revenue and expenses of miscellaneous operations involving the use of such facilities as hotels and restaurants, power plants, cold-storage plants, coal-storage plants, cotton-compress plants, wood-preserving plants, ice-supply plants, etc., shall not be included in the accounts of this classification when the facilities used are distinct from those used by the carrier in the service of transportation or in the maintenance of facilities used in transportation service, and the operations are not incident to such service. (See income accounts No. 502, "Revenues from miscellaneous operations," and No. 534, "Expenses of miscellaneous operations," and balance-sheet account No. 705, "Miscellaneous physical property.")

5. SUBMISSION OF QUESTIONS.—To the end that uniformity of accounting may be maintained from year to year, carriers shall submit all questions of doubtful interpretation of the accounting rules to the Commission for consideration and decision.

# OPERATING REVENUE ACCOUNTS.

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# SPECIAL INSTRUCTIONS.

1. ACCOUNTS FOR OPERATING REVENUES.—The accounts provided for operating revenues are designed to show amounts of money which a carrier becomes entitled to receive from transportation and from operations incident thereto.

Credits to the revenue accounts shall as nearly as practicable be upon the basis of accruals of revenue.

No charge shall be made against the accounts of this classification for amounts representing tariff charges which for any cause are uncollected, the service for which the charge is made having been properly performed and individuals or companies being liable for the charges.

Uncollectible charges against individuals and companies, representing tariff charges for transportation service rendered for which such individuals and companies are liable, shall be charged to income account No. 533, "Uncollectible railway revenues." This includes items such as charges where credit has been extended and the debtor becomes insolvent, and also uncollectible undercharges discovered after the service has been rendered.

Uncollected tariff charges on unclaimed and refused shipments of freight, such refused shipments having been transported in accordance with the contract of shipment, shall be charged to a suspense account, to which shall be credited, to the extent of the tariff charges included therein, the proceeds derived from the sale of such unclaimed and refused freight. When the excess of the tariff charges over the amount realized from the sale of the freight is found to be uncollectible, it shall be cleared to income account No. 533, "Uncollectible railway revenues."

When the amount realized from the sale of such unclaimed and refused freight exceeds the amount of the tariff charges for the transportation thereof, the excess (if lawfully retained by the carrier) shall be credited to profit and loss account No. 607, "Miscellaneous credits."

The carrier's tariff charges on lost, destroyed, or damaged shipments, for which charges neither consignees nor consignors are liable, shall be charged to the revenue accounts previously credited.

Overcharges, when discovered, shall be credited to balance-sheet account No. 778, "Other unadjusted credits," and when found to be unrefundable, shall be cleared to profit and loss account No. 605, "Unrefundable overcharges."

2. INTERPRETATION OF ITEM LISTS.—Lists of items to be credited and of items to be charged have been given as a part of the text of this classification for the purpose of clearly indicating the application of the accounting rules. They are not to be considered as comprising all the items creditable or chargeable to the several accounts, but merely as representative of them.

The items contained in the lists of items to be charged to the respective accounts are chargeable only when such items have been, through oversight, included in the credits to the accounts, or they are items of revenue payable to others for service to be rendered in accordance with the tariff provisions applicable to the rates upon which the credits to the several accounts have been based.

# TEXT PERTAINING TO OPERATING REVENUE ACCOUNTS.

## I. TRANSPORTATION—RAIL LINE.

The primary accounts included in this general account are designed to show amounts of money which the carrier becomes entitled to receive or which accrue to its benefit from service rendered in transporting property or persons by rail line. (See general instructions, section 1.)

### 101. FREIGHT.

This account shall include revenue from the transportation of freight and from transit, stop, and reconsigning privileges, upon the basis of lawful tariff rates.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local freight tariff rates, regardless of class of train in which the freight is transported.
(b) The carrier's proportion of revenue upon the basis of through freight tariff rates, regardless of class of train on which the freight is transported.
(c) Revenue from transportation of mail matter, and empty mail pouches, at freight tariff rates.
(d) Revenue from transportation of freight on special trains at rates based on weights of shipments.
(e) Revenue on basis of classifications and freight tariffs from transportation of caretakers of freight shipments.
(f) Revenue from reconsigning privileges.
(g) Revenue from stop privileges.
(h) Revenue from transit privileges.
(i) Revenue upon the basis of arbitraries out of freight rates for water transfers (ferriage, lighterage, and floatage).

ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid as bridge and ferry arbitraries on freight.
Amounts paid for completing a haul.
Amounts paid for elevation of freight.
Amounts paid for switching services, in connection with the transportation of freight, on the basis of switching tariffs, and allowances out of through rates, including amounts paid for switching empty cars in connection with a freight revenue movement.
Amounts paid for transferring freight between stations.
Arbitraries and allowances to others for lighterage and wharfage.
The carrier's proportion of overcharges resulting from the use of erroneous rates, weights, classifications or computations.
The carrier's proportion of refunds on account of errors in routing and billing.
The carrier's proportion of uncollected revenue on freight lost or destroyed in transit.
The carrier's proportion of uncollected tariff charges on damaged shipments for which charges neither shipper nor consignee is liable.

NOTE A.—Amounts paid for switching empty cars otherwise than in connection with loaded movements shall be charged to operating expense account No. 411, "Other expenses," except that amounts paid for switching equipment for repairs shall be included in the appropriate equipment repair accounts.

NOTE B.—Other carriers' proportion of revenue and of uncollectible undercharges paid by the carrier on account of its errors in routing and billing shall be charged to operating expense account No. 411, "Other expenses."

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

NOTE C.—Other carriers' proportion of revenue paid by the carrier on freight lost, destroyed, or damaged in transit, for which neither consignees nor consignors are liable shall be charged to operating expense account No. 418, "Loss and damage—Freight."

NOTE D.—When a lessee company transports freight over the tracks of another carrier on the basis of a proportion of revenues under a joint arrangement, it shall include the entire compensation in its revenues and statistics, charging the appropriate joint facility expense and rental accounts with the amounts paid the lessor company, and the lessor company shall credit the corresponding accounts.

NOTE E.—The accrued revenue derived from the transportation of cream, sweet milk, etc., on a basis of lawful tariffs at rates per package, regardless of weights, shall be included in account No. 109, "Milk."

NOTE F.—Revenue from the transportation of caretakers of freight shipments, when not included as a part of the freight charges on the waybill covering the freight shipments, shall be credited to account No. 102, "Passenger."

## 102. PASSENGER.

This account shall include the revenue from the transportation of passengers, based upon tariff fares for passengers so transported; also from the transportation at special fares of excepted classes of passengers as provided by law.

### ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local tariff fares.
(b) The carrier's proportion of revenue upon the basis of through tariff fares.
(c) Revenue from extra fares on limited trains.
(d) Revenue from additional fares for exclusive use of drawing rooms or state rooms.
(e) Revenue from mileage and scrip coupons honored.
(f) Revenue from transportation of corpses.
(g) Revenue from transportation of passengers on special trains at fares based on rate per capita.
(h) Revenue upon the basis of arbitraries out of passenger fares for water transfers (ferriage).

### ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid as bridge and ferry passenger arbitraries.
Amounts paid for switching empty passenger-train cars in connection with the transportation of passengers on the basis of tariff fares for passengers so transported.
Amounts paid for switching services in completing a transportation movement.
Amounts paid for transferring passengers or baggage between stations or connecting lines.
Redemptions of unused and partially unused local passenger tickets.
Refunds of extra fares on limited trains.
Refunds of local tariff fares.
The carrier's proportion of redemptions of unused and partially unused through passenger tickets.
The carrier's proportion of refunds of through tariff fares.
The carrier's proportion of overcharges resulting from the application in error of fares in excess of tariffs.

NOTE A.—Refundable cash fare penalty collections made by conductors, and the refundable portions of amounts derived from the sales of mileage tickets, mileage credentials, and scrip shall not be credited to this account but to an appropriate suspense account.

NOTE B.—This account shall be credited with the cash value of coupons from mileage tickets and scrip only as they are honored for transportation. Gross receipts from mileage tickets and scrip when sold shall be credited to an open account. The open account shall be charged and this account credited with the cash value of coupons as honored.

NOTE C.—When a lessee company transports passengers over the tracks of another carrier on the basis of a proportion of revenues under a joint arrangement, it shall include the entire compensation in its revenues and statistics, charging the appropriate joint facility expense and rental accounts with the amounts paid the lessor company, and the lessor company shall credit the corresponding joint facility accounts.

NOTE D.—Amounts paid for switching empty passenger-train cars otherwise than in connection with loaded movements shall be charged to operating expense account No. 411, "Other expenses," except that charges for switching equipment for repairs shall be included in the appropriate equipment repair accounts.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

103. EXCESS BAGGAGE.

This account shall include the revenue from the transportation of baggage in excess of free authorized allowances on the basis of excess baggage tariff rates.

To this account shall be credited the cash value of coupons from baggage scrip books only as the coupons therefrom are honored for transportation of excess baggage.

NOTE A.—Revenue derived from the transportation of shipments of silk, fish, etc., in passenger trains at freight tariff rates shall be included in account No. 101, "Freight."

NOTE B.—Revenue derived from the transportation of packages, articles, dogs, etc., on passenger trains on the basis of passenger tariff rates shall be included in account No. 108, "Other passenger-train."

NOTE C.—The refundable portions of amounts derived from the sale of baggage scrip books shall not be credited to this account.

NOTE D.—The gross receipts from baggage scrip books when sold shall be credited to an open account. The open account shall be charged and this account credited with the cash value of coupons as honored.

104. SLEEPING CAR.

This account shall include the revenue from berth and seat accommodations furnished in sleeping cars on the basis of berth or seat rates for the space occupied.

105. PARLOR AND CHAIR CAR.

This account shall include the revenue from seat accommodations furnished in parlor, observation, chair, and other special passenger cars when operated in passenger-train service or in special-train service at seat rates for space occupied.

106. MAIL.

This account shall include the revenue from the transportation of mail at established rates for specified routes; from the use of railway post-office cars when in carrier's service transporting mails; from the use of special mail facilities; and from bonuses for special mail transportation.

To this account shall be charged fines and penalties imposed by the Government when not collected from agents or employees.

NOTE.—The revenue from the transportation of mail matter and empty mail pouches on freight trains at freight tariff rates shall be included in account No. 101, "Freight."

107. EXPRESS.

This account shall include the revenue from transportation of express matter and from use of facilities on trains and at stations incident to such transportation.

When a railway company transacts an express business through its regular railway organization, the revenue therefrom shall be credited to this account.

NOTE.—When contracts for express privileges provide specific amounts for the rent of facilities at stations, such amounts shall be included in revenue account No. 142, "Rents of buildings and other property."

108. OTHER PASSENGER-TRAIN.

This account shall include the revenue from transportation incident to the operation of passenger trains, not provided for otherwise.

LIST OF ITEMS.

(See special instructions, section 2.)

(a) Revenue from transportation of packages, newspapers, articles, dogs, etc., on passenger trains at other than freight or excess baggage rates.
(b) Revenue received under a guaranteed lump-sum minimum for the transportation of passengers on regular or chartered trains, in excess of regular tariff fares for the passengers actually transported.
(c) The carrier's proportion of revenue derived from the operation over its lines of sleeping, parlor, chair, observation, and other special cars owned and operated by other companies.
(d) Unclaimed penalty collections on trains.
(e) Value of the portions of mileage tickets, mileage coupons, and scrip books unpresented and unredeemed.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

109. MILK.

This account shall include the revenue from the transportation of cream, sweet milk, skim milk, sour milk, buttermilk, condensed milk, butter fat, and smearcase or pot cheese, upon the basis of lawful tariffs at rates per package, regardless of weights.

NOTE.—The revenue from the transportation of milk upon the basis of lawful tariffs at rates per specified weights shall be included in revenue account No. 101, "Freight."

110. SWITCHING.

This account shall include the revenue from switching service upon the basis of lawful tariff rates.

To this account shall be credited the carrier's revenue upon the basis of tariff rates, or the carrier's allowance out of through rates, from the switching of cars of all kinds, loaded or empty, either locally at a station or within a switching district, between connecting lines, between local industries, or between connecting lines and local industries; revenue upon the basis of distinct tariff rates for "trap-car" and "ferry-car" service and for spotting cars; also the revenue from interwork switching at industrial plants, and the revenue from "penalty switching" incident to the improper delivery of cars by other carriers.

To this account shall be charged amounts paid others for switching when such switching service is provided for in the switching rate charged by the carrier.

NOTE.—"Penalty switching" charges paid by the carrier shall be included in expense account No. 411, "Other expenses."

111. SPECIAL SERVICE TRAIN.

This account shall include the revenue from running trains either on the basis of a rate per mile or a lump-sum rate for the train.

LIST OF ITEMS.

(See special instructions, section 2.)

(a) The carrier's revenue from handling baggage cars in special trains for theatrical companies.
(b) The carrier's revenue from handling circus or theatrical company trains on basis of specific amounts for transportation between designated stations.
(c) The carrier's revenue from running trains for Federal or State Governments to transport troops, war munitions, camp outfits, etc.

NOTE A.—No account need be kept of the number of tons and ton-miles or of passengers and passenger-miles where the revenues from a train are properly creditable to this account.

NOTE B.—The revenue derived from the transportation of freight and passengers on a special train, upon the basis of a rate per pound, per hundredweight, or per ton for freight, and a rate per capita for passengers shall be credited to revenue accounts No. 101, "Freight," and No. 102, "Passenger," in accordance with the charges for each class of transportation service. Such trains shall be classified as freight, passenger, or mixed, as may be appropriate under the classification of train, locomotive, and car miles.

112. OTHER FREIGHT-TRAIN.

This account shall include the revenue from transportation incident to the operation of freight trains not otherwise provided for, such as revenue in excess of tariff rates for the transportation of freight in revenue trains, with a guaranteed lump-sum minimum.

113. WATER TRANSFERS—FREIGHT.

This account shall include the revenue from the transfer of freight by water transfers (ferriage, lighterage, and floatage) upon the basis of lawful tariff rates for local service.

NOTE.—No revenue shall be included in this account upon the basis of arbitraries out of rates for transportation involving rail line haul.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

114. WATER TRANSFERS—PASSENGER.

This account shall include the revenue from the transfer of passengers by water transfers (ferriage) upon the basis of lawful tariff rates for local service.

NOTE.—No revenue shall be included in this account upon the basis of arbitraries out of rates for transportation involving rail line conveyance.

115. WATER TRANSFERS—VEHICLES AND LIVE STOCK.

This account shall include the revenue from the transfer by water transfers upon the basis of lawful local tariff rates, of vehicles of all classes; horses, cattle and other animals; and Government artillery and equipment.

NOTE.—No revenue shall be included in this account upon the basis of arbitraries out of rates for transportation involving rail line haul.

116. WATER TRANSFERS—OTHER.

This account shall include the revenue from water transfers not otherwise provided for, such as the revenue from towing beyond lighterage limits and all other towing for which an extra charge is made; insurance of freight afloat when billed out at other than cost; storage of freight afloat; grain overage in boats; pumping performed for outside parties; and from other similar sources.

To this account shall be charged amounts payable to other companies or individuals for extra lighterage, extra towing, and for all other service when such payments represent revenue collected and credited to this account and not a direct expense.

## II. TRANSPORTATION—WATER LINE.

The primary accounts included in this general account are designed to show amounts of money which the carrier becomes entitled to receive or which accrue to its benefit from service rendered in transporting property or persons by water lines. (See general instructions, section 1.)

121. FREIGHT.

This account shall include the revenue from the transportation of freight by water-line service upon the basis of lawful tariff rates.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local freight tariff rates.
(b) Carrier's proportion of revenue upon the basis of through tariff rates.
(c) Revenue from the transportation of mail matter and empty mail pouches at freight tariff rates.
(d) Revenue on the basis of classifications and freight tariffs from the transportation of caretakers of freight shipments.
(e) Arbitraries allowed in rates for cargo insurance.

ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid for completing a haul.
Amounts paid for elevation of freight.
Amounts paid for transferring freight between stations or connecting lines.
Arbitraries and allowances to others for lighterage and wharfage.
Carrier's proportion of overcharges resulting from the use of erroneous weights, rates, classifications, or computations.
Carrier's proportion of refunds on account of errors in routing or billing.
Carrier's proportion of uncollected revenue on freight lost or destroyed in transit.
Carrier's proportion of uncollected tariff charges on damaged shipments for which charges neither shipper nor consignee is liable.

NOTE A.—Other carriers' proportion of revenue and of uncollectible undercharges paid by the carrier on account of errors in routing and billing shall be charged to operating expense account No. 432, "Operation of terminals."

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

NOTE B.—Other carriers' proportion of revenue paid by the carrier on freight lost or destroyed in transit shall be charged to operating expense account No. 433, "Incidental."

NOTE C.—If the carrier maintains a transfer or lighterage service the expenses of which are included in expense account No. 432, "Operation of terminals," the revenues arising from the service shall be included in account No. 128, "Other." If the service is performed by an outside party, its cost to the carrier shall be charged to the appropriate revenue account.

NOTE D.—Revenue from the transportation of caretakers of freight shipments, when not included as a part of the freight charges on the waybill covering the freight shipments, shall be credited to account No. 122, "Passenger."

122. PASSENGER.

This account shall include the revenue from the transportation of passengers by water-line service based on tariff fares for the passengers so transported; also transportation at special fares of excepted classes of passengers as provided by law.

The credits to this account shall appear under appropriate subheads, as follows:

(a) Revenue from the transportation of passengers, including sleeping accommodations and meals (when not separable).
(b) Revenue from the transportation of passengers, not including sleeping accommodations and meals.
(c) Revenue from the rent of staterooms, berths in staterooms, and other sleeping and living accommodations.
(d) Revenue from the sale of meals and food supplies.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local tariff fares.
(b) The carrier's proportion of revenue upon the basis of through tariff fares.
(c) Revenue from extra fares for limited service.
(d) Revenue from mileage and scrip coupons honored.
(e) Revenue from the transportation of corpses.

ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid for transferring passengers or baggage between stations or connecting lines.
Redemptions of unused or partially unused local passenger tickets.
Refunds of local tariff fares.
The carrier's proportion of redemptions of unused or partially unused through passenger tickets.
The carrier's proportion of refunds of through tariff fares.
The carrier's proportion of overcharges resulting from the application in error of fares in excess of tariffs.

NOTE.—This account shall be credited with the cash value of coupons from mileage tickets and scrip only as they are honored for transportation. Gross receipts from mileage tickets and scrip, when sold, shall be credited to an open account. The open account shall be charged and this account credited with the cash value of the coupons as honored.

123. EXCESS BAGGAGE.

This account shall include the revenue from the transportation by water-line service of baggage in excess of free authorized allowance on the basis of excess baggage tariff rates; also the revenue from the transportation of packages, articles, dogs, etc., incidental to the transportation of passengers.

To this account shall be credited the cash value of coupons from baggage scrip books only as they are honored for the transportation of excess baggage.

NOTE A.—The refundable portion of amounts derived from the sale of baggage scrip coupons shall not be credited to this account.

NOTE B.—The gross receipts from baggage scrip books, when sold, shall be credited to an open account. The open account shall be charged, and this account credited with the cash value of coupons as honored.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

124. OTHER PASSENGER SERVICE.

This account shall include revenue, not otherwise provided for, incident to the transportation of passengers.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from the sale of tobacco, cigars, cigarettes, etc.
(b) Revenue from the sale of books, periodicals, and other news-stand supplies.
(c) Revenue from the rent of steamer chairs and rugs.

125. MAIL.

This account shall include the revenue from the transportation of mail by water-line service at established rates for specified routes; from the use of special facilities; and from bonuses for special mail transportation.

To this account shall be charged fines and penalties imposed by the Government when not collected from agents or employees.

NOTE.—The revenue from the transportation of mail matter and empty mail pouches at freight tariff rates shall be included in account No. 121, "Freight."

126. EXPRESS.

This account shall include the revenue from transportation of express matter by water-line service, and from the use of facilities on vessels and at stations incident to such transportation.

When a carrier transacts an express business by water line through its regular organization, the earnings therefrom shall be credited to this account.

NOTE.—When contracts for express privileges provide specific amounts for the rent of facilities at stations, such amounts shall be included in revenue account No. 142, "Rents of buildings and other property."

127. SPECIAL SERVICE.

This account shall include the revenue from running vessels on excursions or special trips when specific charges not based on the number of passengers carried are made for transportation between designated points; and from running special trips carrying troops, munitions of war, camp outfits, etc., for the Federal or State Governments when specific lump amounts are charged for the transportation.

NOTE.—Lump sums received for passenger excursions or for special trips ordinarily designated as "charter of vessels," shall be treated as revenue incident to transportation, rather than as rent, and shall be included in this account.

128. OTHER.

This account shall include the revenue from transportation by water line not provided for elsewhere.

NOTE.—Revenues upon the basis of distinct tariff rates from services rendered and facilities furnished on wharves and at stations incident to the operation of water-line service shall be included in the primary accounts under general account III, Incidental.

## III. INCIDENTAL.

The primary accounts included in this general account are designed to show the amounts which the carrier becomes entitled to receive from services rendered incidentally with rail-line and water-line transportation, for the use of facilities of which the expenses for operation and maintenance are not separable from railway expenses, and from incidental sources not provided for elsewhere.

The accounts for incidental revenue shall be kept in such manner as to show separately, by primary accounts, the revenue from services rendered and facilities furnished on wharves and at stations incident to the operation of water-line service.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

131. DINING AND BUFFET.

This account shall include the revenue from dining and buffet service on trains and transfer boats.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from lunches furnished.
(b) Revenue from meals furnished.
(c) Revenue from liquors furnished.
(d) Revenue from tobacco furnished.
(e) Revenue from cigars and cigarettes furnished.

NOTE.—The revenue from dining and buffet service on vessels which are operated in water-line service is provided for in the primary accounts included in general account II, Transportation—Water Line.

132. HOTEL AND RESTAURANT.

This account shall include the revenue from hotels, restaurants, and station lunch counters. (See general instructions, section 4.)

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from the rent of rooms.
(b) Revenue from the use of baths.
(c) Revenue from the use of billiard tables.
(d) Revenue from the use of bowling alleys.
(e) Revenue from lunches furnished.
(f) Revenue from meals furnished.
(g) Revenue from liquors furnished.
(h) Revenue from tobacco furnished.
(i) Revenue from cigars furnished.
(j) Revenue from cigarettes furnished.
(k) Revenue from newspapers furnished.
(l) Revenue from periodicals furnished.
(m) Revenue from tonsorial service.
(n) Revenue from laundry work.

NOTE.—This account shall not include the revenues from hotels and restaurants which are entirely distinct from the carrier's transportation plant and the cost of which is included in balance-sheet account No. 705, "Miscellaneous physical property."

133. STATION, TRAIN, AND BOAT PRIVILEGES.

This account shall include revenue from weighing, vending, and other automatic machines located at stations; from advertising at stations and on trains and on transfer boats; from the privilege of operating news stands at stations and selling papers, periodicals, fruit, etc., on trains and on transfer boats; from telephone companies for the privilege of installing and operating commercial telephones at stations; from the operation of eating houses and dining and buffet service on trains and transfer boats when such operation is conducted by individuals or companies other than railway companies and when the expenses incurred by the carrier in connection therewith are not separable from its regular operating expenses; and from similar sources.

NOTE.—The revenue from privileges on vessels operated in water-line service is provided for in the primary accounts included in general account II, Transportation—Water Line.

134. PARCEL ROOM.

This account shall include the revenue from the operation of parcel rooms.

135. STORAGE—FREIGHT.

This account shall include the revenue from the storage of freight.

136. STORAGE—BAGGAGE.

This account shall include the revenue from the storage of baggage.

137. DEMURRAGE.

This account shall include the revenue from the detention of cars incident to loading, unloading, reconsigning, and stops in transit upon the basis of lawful tariffs for demurrage.

138. TELEGRAPH AND TELEPHONE.

This account shall include the revenue from commercial telegraph and telephone operations; also amounts received from telegraph and telephone companies, whether as a proportion of earnings or otherwise, for the privilege of transacting a commercial telegraph or telephone business in offices along the carrier's lines, when the carrier furnishes some service of employees whose pay is included in its operating expenses.

NOTE.—When a telegraph or telephone company rents the telegraph or telephone line of the carrier and pays all expenses incident to its maintenance and operation, the rent received shall be credited to income account No. 510, "Miscellaneous rent income."

139. GRAIN ELEVATOR.

This account shall include the revenue from the operation of grain elevators. (See general instructions, section 4.)

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from the elevation of grain.
(b) Revenue from the storage of grain.
(c) Revenue from bagging grain.
(d) Revenue from screening grain.
(e) Revenue from blowing grain.
(f) Revenue from cooling grain.
(g) Revenue from clipping grain.
(h) Revenue from cleaning grain.
(i) Revenue from mixing grain.
(j) Revenue from transferring grain in elevators.
(k) Revenue from loading grain into and unloading grain from boats not covered by elevation charges.
(l) Revenue from trimming grain in boats when performed by elevator employees.
(m) Revenue from the sale of screenings and sweepings.
(n) Revenue from inspecting grain in elevators.

140. STOCKYARD.

This account shall include the revenue from stockyards. (See general instructions, section 4.)

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from feeding live stock.
(b) Revenue from watering live stock.
(c) Revenue from bedding live stock.
(d) Revenue from otherwise caring for live stock.
(e) Revenue from shearing sheep.
(f) Revenue from dipping sheep and cattle.
(g) Revenue from stabling horses.
(h) Revenue from inspecting live stock.

141. POWER.

This account shall include the revenue from the sale of electric current and other power. (See general instructions, section 4.)

142. RENTS OF BUILDINGS AND OTHER PROPERTY.

This account shall include the revenue from the exclusive use of buildings and other property or portions thereof, such as depot and station grounds and buildings, general and other offices, wharves, ferry landings, elevators, stockyards, fuel yards, enginehouses, repair shops, and section and other houses, when the property is operated and maintained in connection with the property used in the carrier's transportation operations and the expenses of maintaining and operating the rented portion can not be separated from the expenses of that portion used by the carrier. (See general instructions, section 4.)

NOTE.—When the expenses of maintaining and those of operating property rented to others are separable, the rents received shall be credited and the expenses of maintenance and operation shall be charged to appropriate income accounts.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

143. MISCELLANEOUS.

This account shall include the revenue from railway operations not provided for elsewhere. (See general instructions, section 4.)

LIST OF ITEMS.

(See special instructions, section 2.)

(a) Amounts received for privilege of cutting hay along the right of way.
(b) Commissions received for collecting premiums on insurance policies from employees and installment payments for books, watches, etc., sold by dealers to employees.
(c) Profit from jobbing and installing electric power lines for others.
(d) Revenue from boat demurrage.
(e) Revenue from freight and passenger privileges over a carrier's wharves and docks.
(f) Revenue from garnishee fees.
(g) Revenue from operation of coal and ore wharves, cold-storage plants, coal-storage plants, cotton-compress plants, and wood-preserving plants. (See general instructions, section 4.)
(h) Revenue from privilege of mooring and anchoring boats at wharves and docks.
(i) Revenue from sale of cinders produced by carrier.
(j) Revenue from use of carrier's bridges by pedestrians, street car lines, vehicles, etc.
(k) Revenue from temporary use of carrier's tracks for detouring trains, etc.
(l) Revenue from use of tracks incident to delays in loading or removing freight.
(m) Revenue from water furnished boats from water stations operated by the carrier.
(n) Revenue from weighing cars.
(o) The carrier's proportion of gross revenue from operation of clergy bureaus.
(p) The carrier's proportion of gross revenue from operation of ticket validation agencies.
(q) Unclaimed deposits for prepaid transportation.

NOTE.—When a bridge of one carrier is jointly used by itself and another carrier and such use is paid for on the basis of flat rent or charge per train-mile or toll per passenger, per ton, or per car, the compensation therefor shall be credited to the appropriate joint facility, operating expense, and income accounts.

## IV. JOINT FACILITY.

151. JOINT FACILITY—CR.

This account shall include the carrier's proportion of revenue collected by others in connection with the operation of joint tracks, yards, terminals, and other facilities.

NOTE A.—The purpose of this account is to show the amounts of revenue from the operation of joint tracks, yards, terminals, and other facilities operated by other companies, which under existing contracts or agreements are credited by the operating company to the tenant companies which participate therein. The bill rendered by any creditor company against a debtor company for the latter's proportion of the expense of maintenance and operation of joint facilities, which includes also a credit covering a proportion of the revenue to be paid over, shall show the distribution of the credit for such proportion of the revenue separately from the distribution of the expense of operation.

NOTE B.—No credits shall be made to this account representing amounts creditable by the operating company to primary accounts Nos. 101 to 109, 111 to 116, 121 to 128, 131, 132, 139 to 141.

152. JOINT FACILITY—DR.

This account shall include that proportion of revenue from the operation of joint tracks, yards, terminals, and other facilities, which is creditable to other companies.

NOTE A.—The purpose of this account is to show the amount of revenue from operation of a terminal company or other carrier which, under the terms of existing contracts or agreements covering the joint use of tracks, yards, and other facilities, is credited to other carriers that participate in the benefits from such joint use. The bill rendered by a creditor company against a debtor company for the latter's proportion of expense of maintaining and operating joint facilities, which includes a credit covering the debtor company's proportion of the revenues from operation of such joint facilities, shall indicate separately the proper distribution of both the revenues and the expenses included in the bill, and such distribution shall be adhered to by the debtor.

NOTE B.—No debits shall be made to this account representing amounts creditable by the operating company to primary accounts Nos. 101 to 109, 111 to 116, 121 to 128, 131, 132, 139 to 141.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

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# SPECIAL INSTRUCTIONS.

1. ACCOUNTS FOR OPERATING EXPENSES.—The accounts prescribed for operating expenses are designed to show expenses of furnishing transportation service, including the expenses of maintaining the plant used in the service. The accounting shall be as nearly as practicable upon the basis of accruals; however, the option is allowed the carrier of omitting charges to the accounts provided for the depreciation of fixed improvements and of including the depreciation (ledger value less salvage) of such property in the appropriate repair accounts at the time the property is converted or retired for replacement.

*Fixed improvements* means structures which are fixed as to location, such as tunnels, bridges, buildings, earthworks, etc.

2. MAINTENANCE EXPENSES.—The accounts provided for maintenance of fixed improvements and of equipment are designed to show the cost of repairs and also the loss through depreciation of the property used in operations, including all such expenses resulting from ordinary wear and tear of service, exposure to the elements, inadequacy, obsolescence, or other depreciation, or from accident, fire, flood, or other casualty.

The cost of repairs which has been provided for in the several repair accounts shall include the cost of inspecting to determine the repairs necessary, and of adjusting, repairing, or replacing parts, both of fixed improvements and of equipment, such as the repairing of locomotives, cars, frogs and switches, or the replacing of ties, rails, etc., in tracks; the cost of inspecting and testing after repairs have been made, such as the testing of locomotives after repairs to determine that the repairs have been properly made, and the running of repaired locomotives light in order to break them in for regular service; incidental costs of repairs, such as the construction or removal of false work; cost of relocation of fixed improvements; cost of demolishing retired fixed improvements (except those retired and not replaced) and disposing of the wreckage therefrom when the property is demolished by or for the account of the carrier; cost of protecting service during the progress of addition and betterment work; cost of laying out, cleaning, grading, draining, fencing, mowing, and beautifying grounds pertaining to buildings; repairing sidewalks, driveways, and streets within or adjacent to such grounds; cost of removing snow from the roofs of buildings (when not removed by those employed in the buildings); cost of the periodical restoration of seasonal features, such as gardens, shrubbery, and lawns; cost of operating hothouses in connection with the work of beautifying grounds; cost of restoring sidewalks, driveways, lawns, etc., in grounds after addition and betterment work (see general instructions for the classification of investment in road and equipment, section 12); and cost of clearing and removing casual incumbrances, such as ice, snow, and fallen timber.

The difference between the depreciation upon fixed improvements retired and replaced and the amount provided for through the depreciation accounts, shall be included in the repair accounts when the property is retired. Similar adjustments on account of equipment retired shall be included in the accounts for equipment retirements. (See classification of investment in road and equipment, general account II, Equipment.)

Distinct maintenance accounts have been provided for expenses of a general character, such as superintendence, stationery and printing, and injuries to persons, which, on account of established practice, it is deemed advisable to segregate.

3. COST OF REPAIRS.—It is intended that the repair accounts of this classification shall include the cost of labor, materials and supplies, work-train service, floating equipment work service, special machine service, contract work, privileges, protection from casualties, and other analogous items of expense in connection with the maintenance of the plant used in railway service. The several items of cost here referred to are defined as follows:

(*a*) *Cost of labor* includes amounts paid for the labor of the carrier's own employees. Except where otherwise specified in the text of the accounts, the cost of boarding, traveling, and other incidental expenses of employees shall be included in the accounts to which the pay of the employees is chargeable.

(*b*) *Cost of materials and supplies* includes the cost of materials and supplies, including small tools, at the point of free delivery, plus freight charges of foreign lines, and the costs of inspection and loading assumed by the carrier; also a proportion of store expenses (see section 16). It should not, however, include expenses of transportation over the carrier's line. In calculating the cost of materials used proper allowance shall be made for the value of unused portions and of cuttings, turnings, borings, etc., and for the value of the material recovered from property repaired and from temporary tracks; scaffolding, cofferdams, and other temporary structures used in repair work.

(*c*) *Cost of work-train service* includes cost of labor of enginemen, trainmen, and enginehouse men, including the wages of engine crews and train crews held in readiness for such service; and the cost of fuel and other supplies consumed in connection with the operation of work trains.

(*d*) *Cost of floating equipment work service* includes cost of labor of crews, including wages of crews held in readiness for service; and the cost of fuel and other supplies consumed in connection with the operation of floating equipment work service.

(*e*) *Cost of special machine service* includes the cost of labor expended and of materials and supplies consumed in operating steam shovels, scrapers, rail unloaders, ballast unloaders; pile drivers, dredges, ditchers, weed burners, and other labor-saving machines; also rents paid for use of such machines.

(*f*) *Cost of contract work* includes amounts paid for work performed under contract by other companies, firms, or individuals and specific expenses incident to the award of the contract.

(*g*) *Cost of privileges* includes amounts paid for special privileges, such as the temporary use of public property or streets, in connection with the repairs of the property of the carrier. (Periodical payments for such privileges in connection with permanent use of public property for railway operations shall be included in the income accounts.)

(*h*) *Cost of protection from casualties* includes expenditures for protection against damage by fire, flood, etc., such as payments for discovery or extinguishment of fires, cost of detecting and prosecuting incendiaries, expense for witnesses in relation thereto, amounts paid to municipal corporations and others for fire protection, and other analogous items of expense in connection with repair work, but does not include insurance premiums paid to assure reimbursement for prospective losses.

4. ROYALTIES ON APPLIANCES.—The royalties for patent rights on mechanical appliances used in repairs of equipment shall be included in the cost of the repairs.

5. FIXED IMPROVEMENTS RETIRED AND REPLACED.—The ledger value (less salvage and the credit balance in the accrued depreciation account with respect to the property retired) of fixed improvements retired and replaced with property of like purpose, together with the cost of removing the property retired, shall be included in the

accounts appropriate for the repairs of the property before retirement. (See section 7 of general instructions for the classification of investment in road and equipment.)

6. DISTRIBUTION OF CHARGES FOR PROPERTY RETIRED AND REPLACED.—In case the amount chargeable as operating expenses for property retired and replaced, as provided for in section 7 of the general instructions for the classification of investment in road and equipment, is relatively large and its inclusion would seriously distort the expense accounts for a single year, the carrier, if so authorized by the Commission, may charge the amount thereof to balance-sheet account No. 726, "Property abandoned chargeable to operating expenses," and distribute it thereafter, in accordance with the provisions of that account to the operating expenses of succeeding years.

If so authorized by the Commission, the carrier may charge to Profit and Loss any extraordinarily large item representing the cost of property retired and replaced, instead of charging such item to Operating Expenses. The carrier shall file with the Commission a statement of the cost and a description of the property retired and the reasons which, in its judgment, indicate the propriety of charging the cost of such property to Profit and Loss.

7. CHARGES TO OPERATING EXPENSES FOR FIXED IMPROVEMENTS CONVERTED.—In connection with the conversion of fixed improvements, the ledger value of property before conversion, plus the cost of conversion, less the sum of the estimated value of the property as converted, the amount included in the accrued depreciation account with respect to the property thus converted, and the salvage recovered, shall be charged to the accounts of this classification appropriate for repairs of the property before conversion. (See general instructions for the classification of investment in road and equipment, *section 11.*)

8. DEPRECIATION OF FIXED IMPROVEMENTS.—Depreciation accounts, in which to include uniform monthly charges to cover the depreciation of fixed improvements, have been provided for the purpose of creating reserves which will meet or reduce the amounts otherwise chargeable, as may be appropriate, to operating expense or to profit and loss accounts to cover property retired. Such depreciation charges shall be based in each instance upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of the property determined to be equitable by the carrier's experience and best sources of information as to the actual current loss from depreciation. A statement of the bases used by the carrier for computing these charges shall be included in its annual report to the Commission. Until further directed the use of depreciation accounts for fixed improvements is optional with the carrier. (See balance-sheet account No. 775, "Accrued depreciation.—Road.")

9. JOINT FACILITY ACCOUNTS.—Accounts thus designated have been provided for the joint users of tracks, bridges, yards, wharves, stations, and other facilities to indicate the proper accounting for settlements which cover income and operating expenses in connection with the use of such facilities, and for settlements covering cost of yard service. When the compensation for the use of facilities is a fixed amount or is based upon a charge per passenger, ton, car, or other unit, it shall be fairly apportioned by the operating company among the joint facility operating expense and income accounts. The creditor shall show the distribution of these charges upon its bills, and such distribution shall be adhered to by the debtor.

Train service in connection with the line haul of traffic is not considered a joint facility operation, and the settlements between carriers covering items chargeable to accounts Nos. 392 to 403 shall not be included in the joint facility accounts.

10. CLEARING ACCOUNTS.—In recognition of the fact that certain expenditures incident to the construction and the operation of property are not chargeable directly to any particular property investment or expense account, clearing accounts have been

provided for the purpose of securing an equitable distribution of such items to the proper primary accounts. (See sections 11 to 17, inclusive.)

11. GRAVEL AND SAND PITS AND QUARRIES.—When a gravel or sand pit or quarry is opened for operations likely to extend over a long period, an account shall be set up designated "Operations of gravel pit at ——," or "Operations of quarry at ——," as the case may be. To this account shall be charged—

(*a*) That part of the cost of the land in excess of its estimated value after the gravel, sand, or stone has been removed, the amount thus charged being concurrently credited to the property account in which the cost of the land is included.

(*b*) Amounts paid for the right to enter upon and remove ballast from land not owned by the carrier.

(*c*) The cost of sinking test holes.

(*d*) The expenses for clearing, stripping, draining, and ditching the land, and of moving and changing fences and buildings preparatory to opening the pit or quarry.

(*e*) The cost, in excess of the estimated salvage value, of rails and fastenings used in constructing tracks to and in the gravel pit or quarry, the estimated salvage being carried in an appropriate suspense account.

(*f*) The cost, in excess of the estimated salvage value, of ties and other material, and of labor expended on such tracks.

(*g*) The cost of labor and train service employed in producing, quarrying, and loading ballast, including the cost of operation, repairs, and depreciation of stationary engines, steam shovels, stone crushers, and other similar machinery, and the pay and expenses of watchmen.

(*h*) The cost of explosives and hand tools, and miscellaneous expenses.

(*i*) The cost of installing, operating, and maintaining signals and interlockers at gravel pits.

Credit to these accounts shall be made each month to cover the cost of ballast materia. produced during the month. The cost of production shall include the expenses directly assignable to the monthly output, plus a proportion of the expenses not directly assignable, such as cost of land, tracks, machinery, and interlockers. This latter amount shall be computed upon the basis of the ratio which the monthly output bears to the total estimated yardage to be taken from the pit.

When any portion of the product of such pits or quarries is sold, the cost thereof shall be credited to this clearing account, and the profit thereon, if any, shall be credited to revenue account No. 143, "Miscellaneous."

12. POWER PLANT OPERATIONS.—The accounting for the expenses of maintaining and operating an electric, steam, or other power plant (both building and machinery) shall be determined by the purpose for which the power produced is used.

When the power plant is intended and used for producing power solely for the carrier's own operations and the cost of operating the plant is chargeable to clearing account "Shop expenses," or to any one specific account for operating expenses the expenses of maintenance shall be charged to the appropriate maintenance accounts, and the cost of operation to the account appropriate according to the use of the power.

When the power from such a plant is properly chargeable to more than one account, the expenses of maintaining and operating the plant shall be included in clearing account "Power plant operations." The expense of maintenance shall be cleared from that account to the appropriate maintenance accounts for operating expenses. The expenses of operation shall be apportioned to the appropriate accounts upon the basis of quantity of power used for the various purposes.

When a part of the power produced by a power plant is sold and the remainder is used in the carrier's own operations, the cost of maintaining and operating the plant shall be charged to a clearing account. The expense of maintenance shall be cleared from that account to the appropriate maintenance account in operating expenses. The proportion of the expenses of operation assignable to the power sold,

on the basis of ratio of quantity of power sold to total quantity of power produced, shall be credited to this clearing account and charged to account No. 445, "Producing power sold." The remainder of the cost of operation shall be distributed to the appropriate expense accounts for the carrier's own operations, in the manner indicated in the preceding paragraphs.

When power plants are intended and used solely for furnishing power to others, the investment therein shall be included in balance sheet account No. 705, "Miscellaneous physical property," and the operation shall not be included in the accounts of this classification. (See general instructions, section 4, and income account No. 534, "Expenses of miscellaneous operations.")

13. POWER SUBSTATION OPERATIONS.—The plan outlined for the expenses of operating power plants shall be followed in accounting for the operations of substations.

14. MAINTAINING TRANSMISSION AND DISTRIBUTION SYSTEMS.—The accounting for the maintenance of transmission systems and distribution systems shall be in accordance with instructions pertaining to power plant operations.

15. SHOP EXPENSES.—A clearing account entitled "Shop expenses" shall be kept, to which shall be charged items of expense at shops, enginehouses, repair tracks, and other places at which mechanical work is done, not assignable directly to specific accounts. Such expenses shall be apportioned among the various accounts affected. The basis of distribution shall be the relative proportion which the total amount of charges to "Shop expenses" bears to the total of the directly distributed labor. To avoid monthly fluctuations in the ratio of shop expenses to the total of distributed labor, carriers are permitted to make the monthly apportionment on the basis of a percentage of the distributed labor, provided the shop expense account be adjusted and closed out at the end of each year. The expenses assignable to this account are as follows:

(a) *General shop employees.*—The pay of general foremen in small shops, who exercise direct supervision over all departments unassisted by department foremen; the pay of department foremen, assistant department foremen, other supervising or directing employees, and their clerks; pay of chauffeurs and oilers; pay of sweepers, cleaners, roustabouts, and other unskilled laborers employed in general work in and about shops and shop grounds; pay of watchmen, gatekeepers, and policemen at shops, repair tracks, and other places at which mechanical work is done; pay of employees while attending fires or fire drills; and pay of employees while making, repairing, or having charge of small shop tools.

(b) *Power.*—The cost of fuel used in steam and other power plants in producing power for shops and for other places at which mechanical work is done; cost of oil, grease, waste, and other material used in the operation of such power plants; pay of stationary engineers, firemen, electricians, coal handlers, and other employees engaged in production of power; cost of carbon brushes, fuses, lamps, picks, pokers, scuttles, shovels, and other small tools and supplies; and cost of water and power purchased. (See section 12.)

(c) *Heating.*—The cost of fuel and other supplies used for heating shops and other places at which mechanical work is done, shop offices, watchmen's and gatekeepers' boxes, and inspectors' shanties; and the pay of firemen, coal handlers, and other employees engaged in operating heating boilers. (See section 12.)

(d) *Lighting.*—The cost of electric current, gas, oil, torches, lamp burners, lamp chimneys, lamps not permanently attached to buildings, incandescent lamps and carbons, and other material used in lighting shops and shop offices, repair tracks, and other places at which mechanical work is done, and cost of material used and labor expended in operating electric-light plants and repairing electric-light and other lamps at shops. (See section 12.)

(e) *Switching locomotives.*—All expenses, including wages, fuel, and supplies, of operating switching locomotives when exclusively assigned to switching service at

shops. (The expenses of incidental switching at shops by locomotives in transportation switching service shall be charged to appropriate transportation accounts.)

(*f*) *Shop supplies.*—Fuel for forge and other shop work; supplies and small tools used by mechanics on miscellaneous work and not durable; test-room and laboratory supplies used in connection with shop work; lubricating material for shop machinery and tools; water used at shops and shop offices, repair tracks, and other places at which mechanical work is done; and other supplies used generally in shop work.

LIST OF SUPPLIES AND SMALL TOOLS.

Acid.
Adzes.
Ammonia.
Auger bits.
Augers.
Axes.
Basins.
Bath brick.
Battery brushes.
Beeswax.
Bell cord.
Bluestone.
Bone, granulated.
Borax.
Bottles.
Braces and bits.
Brooms.
Brushes, dust.
Brushes, file.
Brushes, oil.
Brushes, paint.
Brushes, scrub.
Brushes, sweeping.
Brushes, varnish.
Brushes, wall.
Brushes, whitewash.
Brushes, window.
Buckets.
Carpenter tools furnished apprentices.
Casehardening compound.
Cement, belt.
Chalk.
Chalk lines.
Chamois skins.
Charcoal.
Chisels.
Clamps, hand.
Coal picks.
Compound for B. S. hammers.
Compound for grinding.
Compound for hydraulic jacks.
Compound for welding.
Corks.
Cosmic to prevent rust.
Crayon.
Cups, tin.
Cushion beaters.
Dippers.
Disinfectants.
Ditching lines.
Drill bits.
Drinking cups.
Drinking glasses.
Dustpans.
Emery.
Emery boxes.
Emery cloth.
Emery paper.
Faucets.
File cards.
Files.
Fire hooks for stationary boilers.
Fire shovels for stationary boilers.
Flags.
Flannel, canton.
Forks.
Forks, coke.
Funnels.
Gimlets.
Glue.
Gluepots.
Glycerin.
Graphite.
Grindstones.
Ground glass.
Hack-saw blades.
Hammers.
Hammers, babbitt.
Hand leathers.
Handles for tools.
Hatchets.
Hoes.
Keel.
Lampblack.
Lead.
Lye.
Mallets.
Marking brushes.
Marking pots.
Measures, liquid.
Mineral paste.
Mop handles.
Mops.
Muslin.
Nippers.
Oil cans.
Oilstones.
Padlocks.
Paint pots.
Picks.
Pipe-joint grease.
Pliers.
Plumbago.
Polish.
Polish, stove.
Potash.
Prisms.
Rakes.
Rasps.
Ratchet braces.
Red lead.
Resin.
Rope.
Rules.
Sal ammoniac.
Sand soap.
Sandpaper.
Saw blades.
Saws, hand.
Scoops.
Screw drivers.
Screws.
Shellac.
Shovels.
Slate pencils.
Slates.
Sledges.
Soap.
Soda.
Solder.
Soldering fluid.
Spelter solder.
Spigots for oil barrels.
Spirit-level vials.
Spirit levels.
Sponges.
Sprinkling cans.
Squares.
Squirts (lubricating).
Stencil brushes.
Tacks.
Tape lines.
Tapes, metallic.
Tool steel for small hand tools.
Tripoli.
Trucks.
Twine.
Washbasins.
Wheelbarrows.
Whetstones.
White lead.
Whiting.
Window cloths.
Wire.
Wire brushes.
Wrenches.
Zinc cakes.
Zincs.

(*g*) *Incidental expenses.*—Watchmen's uniforms, clocks, and call boxes; traveling expenses connected with the operation of shops and not directly chargeable to other

accounts; removal of snow and ice from transfer tables and shop yards; cleaning of privy vaults; horse keep; cost of ice for shops; and other undistributed shop expenses.

16. MATERIAL STORE EXPENSES.—To a clearing account called "Material store expenses" shall be charged expenses in connection with purchasing, handling, and storing material in and distributing it from the company's storehouses, including the pay of officers and employees in the purchasing and store departments and their traveling, office, and other expenses; also all expenses, including wages, fuel, and supplies, of operating switching locomotives when exclusively assigned to the service of switching at material storehouses. (Expenses of incidental switching at material yards by locomotives in regular switching service shall be charged to the appropriate transportation accounts.) The pay and expenses of men employed in purchasing or inspecting a single class of material, such as ties, shall be added as store expenses to the cost of that particular material.

The total amount of storehouse expense charged to this account shall be so distributed among the accounts to which material has been charged that the amounts thus distributed will be, for each account, in proportion to the value of the material issued chargeable thereto, except that the amount representing the purchasing department expenses shall be apportioned on the value of the material issued which was purchased by that department. To avoid monthly fluctuations in the ratio of store expenses to the value of material purchased or issued, carriers may make a monthly apportionment on the basis of fair percentage rates, provided the store expense account be adjusted and closed out at the end of each year.

17. STATIONERY STORE EXPENSES.—A clearing account entitled "Stationery store expenses" shall be kept, to which shall be charged expenses in connection with purchasing, handling, and storing stationery, and for distributing it from the stationery stores, including the pay of officers and employees in the stationery store department and their traveling, office, and other expenses. The amounts charged to this account shall be apportioned to the accounts to which is charged stationery issued from the store, upon the basis of the charges to these accounts for such stationery. To avoid monthly fluctuations in the ratio of store expenses to the value of material issued or purchased carriers may make a monthly apportionment on the basis of fair percentage rates, provided the stationery store expense account be adjusted and closed out at the end of each year.

18. INSURANCE.—Provision has been made in each of the general accounts for premiums paid and amounts set aside for fire and other insurance. Amounts of insurance recovered on account of losses shall be credited to the accounts to which the losses are chargeable.

19. EQUALIZATION OF EXPENSES.—For the purpose of equalizing the monthly charges for the repairs of fixed improvements and equipment the carrier may include each month in the appropriate primary repair accounts a uniform proportion of the amount of authorized estimates of such expenses for the fiscal or calendar year. In a like manner, the authorized estimates of expenses on account of personal injury or loss and damage liability, for stationery and printing, and for advertising may be equalized in the monthly accounts for the fiscal or calendar year. If the carrier has been unable to carry out its program for repairs and does not adjust its accounts to conform to the actual expenditures, it may carry forward the balances and treat them as provided in section 20, relating to balances in operating reserves. If, on account of claims for personal injury or loss and damage being unsettled at the close of the year, the accounts for such expenses are not adjusted, the balances carried forward in the operating reserve account shall be analyzed as also provided for in section 20 of these instructions.

Charges for stationery and printing, and for advertising, for a fiscal or calendar year shall be adjusted to the actual expenses.

20. BALANCES IN OPERATING RESERVES.—If, at the end of a fiscal year, balances remain in operating reserves, the carrier shall indicate in detail in a formal report to the Commission the amounts therein, and the conditions causing the carrying forward of such balances, except as to balances applicable to personal injury or loss and damage liability, for which balances the carrier shall preserve in its files the details upon which such estimates were based. Separate records shall be kept of the operating reserve accounts for each year.

21. SUBPRIMARY ACCOUNTS FOR WATER LINES AND ELECTRIC DIVISIONS.—When a carrier operates a water line and desires to set up subprimary accounts under the primary accounts for such operations contained in this classification, the subprimary accounts shall conform to the accounts prescribed in the classification of operating expenses of carriers by water. When the carrier operates an electric division and desires to set up subprimary accounts under the primary accounts contained in this classification, the subprimary accounts shall conform to the accounts prescribed in the classification of operating expenses of electric railways.

22. INTERPRETATION OF ITEM LISTS.—Lists of "items," "details," etc., have been given as a part of this classification for the purpose of clearly indicating the application of the accounting rules in specific cases. The lists in every case are to be considered as merely representative and not as excluding from any account analogous items which happen to be omitted from the list appended. On the other hand, the appearance of an item in a list warrants the inclusion of such item in the account concerned only when the text of the account also indicates inclusion, inasmuch as the same item frequently appears in more than one list—for example, the item of blank books under accounts Nos. 276, 334, 358, 410, and 458—and the proper charge in any one instance must be determined by the text of the account.

# TEXT PERTAINING TO OPERATING EXPENSE ACCOUNTS.

## I. MAINTENANCE OF WAY AND STRUCTURES.

The primary accounts included in this general account are designed to show the expenses of maintaining fixed improvements which are devoted to railway operations, with the exception of shop machinery, power plant machinery, and power substation apparatus, the expenses of maintaining which are includible in general account II, Maintenance of Equipment.

The accounts for maintenance of way and structures shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to sleeping-car operations, water-line operations, dining and buffet service, hotels and restaurants, grain elevators, stockyards, producing power sold, and other miscellaneous operations.

### 201. SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in the maintenance of roadway and structures.

LIST OF OFFICERS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Vice president. | Chief signal engineer. | Inspector of maintenance. |
| Assistant vice president. | Assistant engineers. | Building inspector. |
| General manager. | Architect. | Inspector of roadway stores. |
| Assistant general manager. | Roadmaster. | Supervisor. |
| General superintendent. | Assistant roadmaster. | Assistant supervisor. |
| Assistant general superintendent. | Master carpenter. | Fire chief. |
| Chief engineer. | Assistant master carpenter. | Fire inspector. |
| Engineer. | Master mason. | Sanitary inspector. |
| Division engineer | Superintendent of roadway structures. | |
| Bridge engineer. | Superintendent of scales. | |

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and other employees in the offices and on the business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Chief clerk. | Levelmen. | Messengers. |
| Draftsmen. | Rodmen. | Cooks. |
| Clerks. | Chainmen. | Porters. |
| Stenographers. | Axmen. | |
| Transitmen. | Janitors. | |

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account; also amounts paid detective agencies and others for investigations in connection with maintenance of way and structures.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.
Books for office use.
Business car service.
Fees and dues in associations.
Furniture repairs and renewals.
Heating.
Lighting.
Official train service.
Periodicals and newspapers.
Power.
Provisions for business cars.
Rent of offices.
Repairs of rented offices.
Telegraph service.
Telephone service.
Traveling expenses.
Water and ice.

SUPPLIES FOR TECHNICAL ASSISTANTS.

(See special instructions, section 22.)

Barometers.
Books and maps.
Boxes for materials and instruments.
Cameras.
Camp equipage.
Chains for surveyors.
Compasses.
Curves.
Drafting boards.
Drafting instruments.
Field glasses.
Field notebooks.
Hatchets.
Levels.
Magnets.
Magnifiers.
Marking chalk.
Oilstones.
Paper, blue-print.
Parallel rules.
Photographic supplies.
Plane tables.
Planimeters.
Plummets.
Protractors.
Ranging poles.
Reading glasses.
Rods for surveyors.
Scales.
Section liners.
Sextants.
Slide rules.
Stakes.
Straightedges.
Tally registers.
Tape lines.
Tee-squares.
Telescopes.
Thermometers.
Thumb tacks.
Tracing linens.
Transits.
Traverse tables.
Triangles.
Tripods.
Verniers.

NOTE A.—When employees designated above are engaged on construction or other work not chargeable to Maintenance of Way and Structures, their pay and expenses while thus employed shall be charged to the specific work on which engaged.

NOTE B.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have supervision.

NOTE C.—No part of the pay and expenses of the officers and employees designated above shall be charged to other primary accounts under Maintenance of Way and Structures.

NOTE D.—The cost of stationery for maintenance of way and structures offices is chargeable to account No. 276, "Stationery and printing."

## 202. ROADWAY MAINTENANCE.

This account shall include:

CARE OF ROADBED.—The cost of repairing roadbed.

ITEMS OF ROADWAY EXPENSE.

(See special instructions, section 22.)

Blasting rocks.
Building temporary tracks around slides and washouts.
Constructing and cleaning tile ditches, open ditches, and drains.
Crowning track ties with retaining earth.
Filling borrow and cattle pits.
Keeping tracks clear and repairing subgrade in case of washouts.
Landscape gardening along roadway.
Oiling roadbed.
Removing temporary tracks around slides and washouts.
Repairing roadbed damaged by washouts.
Removing dangerous rocks.
Removing slides.
Restoring roadbed, cuts, fills, and embankments to standard width.
Sloping cuts.
Sodding roadway.

NOTE A.—The cost of drains or sewers laid under tracks shall be included in account No. 208, "Bridges, trestles, and culverts." The cost of landscape gardening within the limits of the grounds around buildings shall be included in the appropriate repair accounts for buildings.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

GENERAL CLEANING.—The cost of cutting, removing, and disposing of brush, grass, and weeds from the right of way; plowing and digging fireguards; dressing ballast and cutting sod lines; removing miscellaneous scrap, drift, cinders, dirt, and other material from right of way and from road and terminal tracks (including tracks at stations, engine yards, and car yards); and cleaning streets used as roadways.

NOTE B.—Loading ashes at engine-yard tracks shall be charged to the enginehouse expense accounts.

WATCHING ROADWAY.—The cost of extinguishing fires on right of way and adjacent thereto, and of walking, watching, and patrolling tracks and right of way.

NOTE C.—The cost of watching and patrolling bridges, buildings, and miscellaneous property is provided for in accounts specifically relating to such property.

BANK PROTECTION.—Cost of protecting banks by repairing retaining walls, riprap, piling, piers, dikes, breakwaters, and revetments, and by changing the channels of streams to prevent cutting, washing, and sliding of embankments.

TRAIN SERVICE.—The cost of work-train service in connection with work pertaining to roadway maintenance.

TRACK CHANGES.—The cost of roadway work in connection with taking up and relocating tracks.

OTHER EXPENSES.—The cost of roadway work not provided for elsewhere, such as official roadway inspection train service and premiums in connection with roadway maintenance.

NOTE D.—Tools and supplies used by repair men and watchmen in roadway maintenance service shall be charged to account No. 271, "Small tools and supplies."

(Note carefully special instructions, sections 2 and 3.)

203. ROADWAY—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of roadway. (See special instructions, section 8.)

204. UNDERGROUND POWER TUBES.

This account shall include the cost of repairing power tubes or conduits for underground contacts of electric railways or for underground cables of cable traction railways.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF UNDERGROUND CONTACT CONSTRUCTION.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Concrete work. | Manhole frames. | Slot rails. |
| Drain pipes. | Pulleys. | Yokes. |
| Manhole covers. | Sheaves. | |

NOTE.—The cost of replacing track rails, other track material, electric contact rails, and insulators shall be charged to the accounts provided for such expenses and not to this account.

205. UNDERGROUND POWER TUBES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of underground power tubes. (See special instructions, section 8.)

206. TUNNELS AND SUBWAYS.

This account shall include the cost of repairing, ventilating, lighting, and watching tunnels and subways for the passage of trains, and the cost of special tools and supplies furnished in connection with the work.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—The cost of repairs to signals and to roadway and tracks in tunnels shall be charged to the appropriate maintenance of way accounts and not to this account.

207. TUNNELS AND SUBWAYS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of tunnels and subways. (See special instructions, section 8.)

208. BRIDGES, TRESTLES, AND CULVERTS.

This account shall include the cost of repairing (including fuel and supplies used) and watching bridges, trestles, and culverts, including altering and bracing during process of filling, removing old structures in connection with the construction of new structures, dredging and cleaning water channels for protection, and cleaning culverts.

The bridges, trestles, and culverts referred to in this account include only structures which carry the carrier's own tracks.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF BRIDGE STRUCTURES.

(See special instructions, section 22.)

Abutments.
Bridge signs.
Cofferdams.
Concrete and masonry ends for culverts.
Cribs.
Decking, including gravel for fire protection.
Dike protection.
Drainage systems.
Draw protection.
Drawbridge engines and machinery.
False work.
Guard timbers.
Ice breakers.
Painting.
Pier protection.
Piers and foundations.
Pipe culverts.
Retaining walls.
Riprap around abutments.
Riprap at culvert ends.
Supports.
Water channels.
Waterproofing.
Wing dams.
Wing walls.

NOTE.—When a part or the entire structure of a bridge or trestle is converted, by filling, into an earth embankment, the ledger value of the structure, or of the portion thereof filled, shall be credited to road and equipment account No. 6, "Bridges, trestles, and culverts." In case the bridge is used in lieu of a temporary trestle for the purpose of filling, the estimated cost of such a temporary trestle shall be charged to road and equipment account No. 3, "Grading." The ledger value of the structure, or portion thereof, filled, less the value of the salvage and the estimated cost of trestle charged to road and equipment account No. 3, "Grading," shall be charged to this account.

209. BRIDGES, TRESTLES, AND CULVERTS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of bridges, trestles, and culverts. (See special instructions, section 8.)

210. ELEVATED STRUCTURES.

This account shall include the cost of repairing elevated structures and foundations of elevated railway systems.

(Note carefully special instructions, sections 2 and 3.)

211. ELEVATED STRUCTURES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of elevated structures and foundations of elevated railway systems. (See special instructions, section 8.)

212. TIES.

This account shall include the cost of cross, switch, bridge, and other track ties used in the repairs of tracks.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of labor for unloading, distributing, and putting ties in tracks, the cost of work-train service in connection with the distribution of the ties laid, and the cost of picking up and concentrating or disposing of the ties released shall be charged to account No. 220, "Track laying and surfacing."

NOTE B.—The excess cost of metal ties applied in place of wooden ties over the cost at current prices of replacing in kind the wooden ties removed shall be charged to road and equipment account No. 8, "Ties."

NOTE C.—The cost of ties used for repairs of tracks in quarries and ballast pits shall be included in the appropriate clearing accounts, and of ties used for repairs of tracks on car floats in account No. 323, "Floating equipment—Repairs."

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

213. TIES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of ties. (See special instructions, section 8.)

214. RAILS.

This account shall include the cost (less salvage) of rails used in the repairs of tracks; also the difference between the cost (at current prices at time of removal) of heavy rails removed and the cost of lighter rails applied in repairs of tracks.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of labor for unloading, distributing, and putting rails in tracks, the cost of work-train service in connection with the distribution of the rails laid, and the cost of picking up and concentrating the rails released shall be charged to account No. 220, "Track laying and surfacing."

NOTE B.—The excess cost of heavier rails or rails of improved quality or type applied in repairs of tracks over the cost, at current prices, of rails of the weight, type, and quality released shall be charged to road and equipment account No. 9, "Rails."

NOTE C.—The cost of rails used for repairs of tracks in quarries and ballast pits shall be included in the appropriate clearing accounts, and of rails used for repairs of tracks on car floats to account No. 323, "Floating equipment—Repairs."

215. RAILS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of rails. (See special instructions, section 8.)

216. OTHER TRACK MATERIAL.

This account shall include the cost (less salvage) of all track material used in the repairs of tracks, other than ballast, ties, and rails.

(Note carefully special instructions, sections 2 and 3.)

ITEMS OF OTHER TRACK MATERIAL.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Angle bars. | Rail braces. | Switch points. |
| Anticreepers. | Rail chairs. | Switch stands. |
| Connecting rods. | Rail clips. | Switch-stand bolts. |
| Derails. | Rail joints. | Switch targets. |
| Frog and guard-rail blocking. | Rail rests. | Switches. |
| Frogs. | Rail shims. | Tie plates. |
| Guard-rail clamps. | Rail splices. | Tie plugs. |
| Guard-rail fasteners. | Splice bars. | Tie-rods. |
| Guard rails. | Step chairs. | Track bolts. |
| Main rods. | Switch chairs. | Track insulators. |
| Nut locks. | Switch crossings. | Track spikes. |
| Nuts. | Switch lamps. | |
| Offset bars. | Switch locks and keys. | |

NOTE A.—The cost of labor and train service for distributing, unloading, and applying "other track material" used, and the cost of picking up and concentrating the material released shall be charged to account No. 220, "Track laying and surfacing."

NOTE B.—The excess cost of improved or heavier track material applied for repairs of tracks, under a definite plan of changing standards, over the cost, at current prices, of material of the same weight and quality as that released, shall be charged to road and equipment account No. 10, "Other track material."

NOTE C.—The cost of "other track material" used for repairs of tracks in quarries and ballast pits shall be included in the appropriate clearing accounts, and of such track material used for repairs of tracks on car floats in account No. 323, "Floating equipment—Repairs."

217. OTHER TRACK MATERIAL—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of "other track material." (See special instructions, section 8.)

218. BALLAST.

This account shall include the cost of gravel, stone, slag, cinders, sand, and like ballast material used in the repairs of tracks, including the cost of work-train service and of unloading the material. (See special instructions, section 11.)

When the ballast taken from a pit is not sufficient to justify the opening of a clearing account, the cost of gravel and quarry rights and cost of sinking test holes shall be included in this account.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of loading cinders at ash pits shall be charged to account No. 388, "Enginehouse expenses—Yard," or to account No. 400, "Enginehouse expenses—Train." No charge to cover the value of cinders accumulated by the carrier shall be included in this account.

NOTE B.—The cost of labor putting ballast in tracks shall be included in account No. 220, "Track laying and surfacing."

NOTE C.—The excess cost of ballasting tracks over the cost of replacing in kind to its maximum height and width the ballast previously put in the roadbed shall be charged to road and equipment account No. 11, "Ballast."

NOTE D.—Earth placed to form a crown in the middle of the track is not to be considered ballast.

NOTE E.—The cost of ballast used for repairs of temporary tracks, such as gravel pit or quarry tracks, shall be included in the appropriate clearing accounts.

219. BALLAST—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of ballast. (See special instructions, section 8.)

220. TRACK LAYING AND SURFACING.

This account shall include:

APPLYING BALLAST.—The cost of labor expended in preparing the roadbed, and applying ballast for repairs of tracks.

APPLYING TIES.—The cost of labor expended in unloading, distributing, and applying ties for repairs of tracks; in gathering up and disposing of the ties released; and in respacing ties.

APPLYING RAILS.—The cost of labor expended in unloading, distributing, cutting, slotting, drilling, adzing for, and laying rails for repairs of tracks; in gathering up and loading rails released; and in adjusting for expansion and contraction of rails.

APPLYING OTHER TRACK MATERIAL.—The cost of labor expended in unloading, distributing, and applying other track material for repairs of tracks; and the cost of gathering up and loading the material released.

TRACK MAINTENANCE.—The cost of labor expended in alining, surfacing, gauging, and shimming tracks; in tightening track bolts and track spikes; in restoring rails, ties, and ballast in case of washouts, derailments, and wrecks; and in taking up tracks.

TRAIN SERVICE.—The cost of work-train service (except work trains distributing ballast material) in connection with work pertaining to track laying and surfacing.

TRACK CHANGES.—The cost of track work (exclusive of the cost of track material) in taking up and relocating tracks.

OTHER EXPENSES.—The cost of track laying and surfacing work not provided for elsewhere, and expenses, such as repairing and replacing rail rests, official track inspection train service, and premiums in connection with track repairs.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—Tools and supplies used by track repair men and watchmen shall be charged to account No. 271, "Small tools and supplies."

221. RIGHT-OF-WAY FENCES.

This account shall include the cost of repairing right-of-way fences (including permanent snow and sand fences in lieu of ordinary right-of-way fences), farm gates, cattle guards, wing fences, aprons, and hedges, except those around stock-yards, fuel stations, station and shop grounds, and building sites.

(Note carefully special instructions, sections 2 and 3.)

222. RIGHT-OF-WAY FENCES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of right-of-way fences. (See special instructions, section 8.)

223. SNOW AND SAND FENCES AND SNOWSHEDS.

This account shall include the cost of repairing permanent and portable snow and sand fences and snowsheds for the protection of tracks from snow and sand, including rent of land for placing snow and sand fences.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of repairing permanent snow and sand fences which take the place of right-of-way fences shall be included in account No. 221, "Right-of-way fences."

NOTE B.—The cost of setting up, taking down, and storing portable snow and sand fences shall be included in account No. 272, "Removing snow, ice, and sand."

224. SNOW AND SAND FENCES AND SNOWSHEDS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of snow and sand fences and snowsheds. (See special instructions, section 8.)

225. CROSSINGS AND SIGNS.

This account shall include the cost of repairing farm passes, highway crossings, and crossings of other railways crossing the carrier's right of way, except railways crossing at grade; also cost of repairing track signs.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF GRADE CROSSINGS.

(See special instructions, section 22.)

Batteries, with track instruments and connections, including battery renewals.
Crossing gates.
Crossing signal bells.
Hose for sprinkling grade crossings.
Paving.
Planking.
Soil crossing drains.
Watch houses at crossings.
Warning signals.
Water for sprinkling grade crossings.
Water pipes.

DETAILS OF OVERGRADE CROSSINGS.

(See special instructions, section 22.)

Bridge substructures.
Bridge superstructures.
Decking, including roadways.
Drainage systems.
Piers, including foundations.
Retaining and wing walls, including foundations

DETAILS OF UNDERGRADE CROSSINGS.

(See special instructions, section 22.)

Drainage systems.
Retaining walls, outside of bridge abutments.
Roadways and sidewalks.
Curbing.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

LIST OF SIGNS.

(See special instructions, section 22.)

Boundary signs.
Mile signs.
Monument stones.
Overhead-bridge caution signs.
Section signs.
Slow or stop signs.
Subdivision boards.
Tunnel caution signs.
Water station signs.
Water trough signs.
Whistle signs.
Yard-limit signs.

NOTE A.—The cost of repairing shop and station overgrade footbridges and subways not pu highways shall be included in repairs of such buildings.

NOTE B.—The cost of repairing a bridge or other structure which carries the track of anc carrier over the accounting carrier's tracks shall be included in this account. The cost of repa bridges or trestles, carrying the carrier's tracks over roads, highways, or other railways, sha charged to account No. 208, "Bridges, trestles, and culverts."

NOTE C.—The cost of repairing bridge signs shall be included in account No. 208, "Bridges, tres and culverts."

226. CROSSINGS AND SIGNS—DEPRECIATION.

This account shall include charges covering the current loss from depreciа of crossings and signs. (See special instructions, section 8.)

227. STATION AND OFFICE BUILDINGS.

This account shall include the cost of repairing station and office buildi fixtures, and appurtenances (including those for heating and lighting), u by the carrier in its operations; also the cost of maintaining grounds appurte to such buildings.

(Note carefully special instructions, sections 2 and 3.)

STATION AND OFFICE STRUCTURES AND DETAILS.

(See special instructions, section 22.)

Baggage rooms.
Breakwaters for protection of buildings.
Buildings and rooms for trainmen.
Buildings on piers.
Call bells.
Coal bins.
Coal-transferring machinery (not on coal and ore wharves).
Coal trestles (not at fuel stations).
Commissarial buildings.
Drainage and sewer systems.
Dwellings.
Eating houses.
Electric wiring.
Elevators and machinery.
Express buildings.
Fences.
Fire-engine houses.
Freight cranes.
Freight derricks.
Freight handling machinery.
Freight houses.
Garages.
Gas-supply systems.
General office buildings.
Grain cribs.
Grain elevators.
Grain warehouses.
Greenhouses.
Hay houses.
Heating plants.
Hedges.
Hoisting engines, for handling freight.
Hose houses.
Ice houses.
Lighting plants.
Mail cranes.
Milk stands.
Office buildings.
Ore transferring machinery (not on coal and ore wharves).
Outhouses.
Pavement in ground limits.
Platforms, freight.
Platforms, passenger, including planking between tracks.
Power distribution systems, interior.
Reading rooms.
Rooms for Y. M. C. A.
Scale houses.
Sidewalks.
Stables.
Station footbridges (not hi way crossings).
Station intertrack fences.
Station platforms.
Station signs.
Station stairways.
Station subways (not highw crossings).
Station power houses.
Stations, freight.
Stations, passenger.
Stock pens.
Storehouses.
Telegraph offices.
Telpher systems.
Track scales.
Transfer houses.
Transfer platforms.
Waiting rooms.
Warehouses.
Washrooms.
Water-supply systems.

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by st or office employees, shall not be included in this account.

228. STATION AND OFFICE BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of station and office buildings. (See special instructions, section 8.)

229. ROADWAY BUILDINGS.

This account shall include the cost of repairing roadway shops and other roadway buildings, including drainage, water, gas, and sewer pipes and their connections, machinery and other apparatus, fixtures, and furniture in the buildings also the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

LIST OF ROADWAY STRUCTURES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Bins for material. | Frog shops used solely for repairs of track material. | Repair shops. |
| Blacksmith shops. | Hand-car houses. | Scrap bins. |
| Boarding houses. | Lumber sheds. | Section dwelling houses. |
| Breakwaters for protection of buildings. | Offices. | Stables. |
| Carpenter shops. | Outhouses. | Storehouses. |
| Dwellings for roadway employees. | Planing mills. | Tool houses. |
| Fire-engine houses. | Rail shops used solely for repairs of track material. | Watch houses. |

NOTE A.—The cost of repairing signal and interlocker buildings and their appurtenances shall be included in account No. 249, "Signals and interlockers."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by employees regularly working in the buildings, shall not be included in this account.

230. ROADWAY BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of roadway buildings. (See special instructions, section 8.)

231 WATER STATIONS.

This account shall include the cost of repairing water stations, fixtures, and appurtenances used by the carrier in its operations, and the cost of maintaining the grounds appurtenant to such stations.

(Note carefully special instructions, sections 2 and 3.)

WATER STATION STRUCTURES AND DETAILS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Boilers. | Penstocks. | Tanks and foundations. |
| Breakwaters for protection of buildings. | Pump houses. | Track tanks. |
| Buildings on piers. | Pumps. | Tubs. |
| Cisterns. | Purifying plants. | Water cranes. |
| Dams. | Reservoirs. | Water-pipe lines. |
| Fences. | Settling basins. | Water-treating plants. |
| Outhouses. | Stationary engines. | Wells. |
| | Steam pipes. | Windmills. |

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by water station employees, shall not be included in this account.

232. WATER STATIONS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of water stations. (See special instructions, section 8.)

## 233. FUEL STATIONS.

This account shall include the cost of repairing fuel stations, fixtures, and appurtenances used by the carrier in its operations, and the cost of maintaining the grounds appurtenant to such stations.

(Note carefully special instructions, sections 2 and 3.)

FUEL STATION STRUCTURES AND DETAILS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Breakwaters for protection of buildings. | Fences. | Inclines. |
| Buckets. | Fuel houses. | Outhouses. |
| Buildings on piers. | Fuel-oil columns. | Scales. |
| Coal buggies. | Fuel-oil plants. | Sheds. |
| Coal hoists. | Fuel-oil pumps. | Stationary engines. |
| Coal pockets and chutes. | Fuel-oil sumps, | Tipple cars. |
| Dumping machinery. | Fuel-oil tanks. | Weighing apparatus. |
| Elevating machinery. | Fuel platforms. | Wood racks. |
| | Fuel wharves. | |

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by fuel station employees, shall not be included in this account.

## 234. FUEL STATIONS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of fuel stations. (See special instructions, section 8.)

## 235. SHOPS AND ENGINEHOUSES.

This account shall include the cost of repairing shop and enginehouse buildings, fixtures, and appurtenances used by the carrier in repairing and preparing equipment, and the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

SHOP AND ENGINEHOUSE STRUCTURES AND DETAILS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Air-compressor houses. | Foundries. | Repair shops. |
| Ash pits and pockets. | Gas-compressor houses. | Sand houses. |
| Ash plants. | Heating plants. | Scale houses. |
| Bins for material. | Hose houses. | Scrap bins. |
| Blacksmith shops. | Ice houses. | Sidewalks. |
| Breakwaters for protection of buildings. | Laboratories. | Stables. |
| | Lighting plants. | Steam distribution systems, interior. |
| Buildings on piers. | Lumber sheds. | |
| Car sheds. | Machine shops. | Storehouses. |
| Car shops. | Material and supply truck tracks. | Tanks, gas. |
| Carpenter shops. | | Tanks, oil. |
| Cinder pits. | Motor-crane tracks. | Test rooms. |
| Cinder pockets. | Offices, shop. | Tin shops. |
| Drop pits. | Oil houses. | Tool houses. |
| Dry houses. | Outhouses. | Track scales. |
| Electric-power distribution systems within buildings. | Paint shops. | Transfer tables. |
| | Pipe lines, air, interior. | Turntables. |
| Enginehouses. | Pipe lines, car-heating. | Upholstering shops. |
| Fire-engine houses. | Pipe lines, gas, interior. | Warehouses. |
| Footbridges (not public highways). | Planing mills. | Wash rooms. |
| | Platforms, shop and yard. | Watch houses. |

NOTE A.—The cost of repairing machinery and other apparatus, including special foundations in shops for maintenance of equipment shall be included in account No. 302, "Shop machinery."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by shop employees, shall not be included in this account.

## 236. SHOPS AND ENGINEHOUSES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of shops and enginehouses. (See special instructions, section 8.)

237. GRAIN ELEVATORS.

This account shall include the cost of repairing structures for the transfer, treatment, and storage of grain, including conveyors, machinery and fixtures; also the cost of maintaining the grounds appurtenant to such buildings.

The buildings referred to in this account are large elevators in which a regular grain business is handled or grain is stored for various owners.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—Small storage elevators at way stations, where the freight is received for shipment, etc., are classed as station buildings.

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by grain elevator employees shall not be included in this account.

238. GRAIN ELEVATORS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of grain elevators. (See special instructions, section 8.)

239. STORAGE WAREHOUSES.

This account shall include the cost of repairing storage warehouses, including machinery and fixtures therein; also the cost of maintaining the grounds appurtenant to such warehouses.

The buildings referred to herein are not the ordinary freight warehouses or stations where freight is received for shipment, etc., but are warehouses in which merchandise is stored and which the carrier operates as storage warehouses.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by storage warehouse employees, shall not be included in this account.

240. STORAGE WAREHOUSES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of storage warehouses. (See special instructions, section 8.)

241. WHARVES AND DOCKS.

This account shall include the cost of repairing wharves located at marine, lake, or river docks; dredging waterways to approaches and around such structures, including removal of dredged-out material; and cutting ice in and around docks and wharves to prevent damage; also cost of repairs of cribwork, racks, or caissons for preserving the depth of water in docks; and cost of repairs of guards, piling, and other protection against damage by drift or ice.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF WHARVES AND DOCKS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Bridge pontoons. | Dry docks. | Ferry slips. |
| Bulkheads. | Ferry-bridge machinery. | Jetties and inclines. |
| Caissons. | Ferry bridges. | Transfer-bridge machinery. |
| Cribwork. | Ferry racks. | Transfer bridges. |

NOTE A.—The cost of repairing buildings, tracks, and machinery (not bridge machinery) on wharves and piers shall be charged to the appropriate expense accounts.

NOTE B.—The cost of repairing coal and ore wharves shall be charged to account No. 243, "Coal and ore wharves."

NOTE C.—Incidental cleaning, when done by regular wharf employees, shall not be included in this account.

242. WHARVES AND DOCKS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of wharves and docks. (See special instructions, section 8.)

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

243. COAL AND ORE WHARVES.

This account shall include the cost of repairing wharves and docks, in the cost of repairing conveyors, machinery, and fixtures for the transfer ment, blending, or storage of coal or ore.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The structures referred to in this account do not include small transfer or storag at stations where coal is stored or delivered, such trestles being classed as station buildings.

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when don and ore wharf employees, shall not be included in this account.

244. COAL AND ORE WHARVES—DEPRECIATION.

This account shall include charges covering the current loss from depr of coal and ore wharves. (See special instructions, section 8.)

245. GAS PRODUCING PLANTS.

This account shall include the cost of repairing gas producing and g pressing plants, including the machinery and appliances in such plants; cost of maintaining the grounds appurtenant to such plants.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by ees of the gas producing plant, shall not be included in this account.

246. GAS PRODUCING PLANTS—DEPRECIATION.

This account shall include charges covering the current loss from depr of gas producing plants and gas compressing plants. (See special instru section 8.)

247. TELEGRAPH AND TELEPHONE LINES.

This account shall include:

TELEGRAPH.—The cost of repairs of telegraph outside plant and terminal ment for which the carrier is responsible, including the cost of work-train and of special tools provided for the work.

TELEPHONE.—The cost of repairs of telephone outside plant and terminal ment for which the carrier is responsible, including the cost of work-train and of special tools provided for the work.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF TELEGRAPH AND TELEPHONE TERMINAL EQUIPMENT.

(See special instructions, section 22.)

Batteries.
Cables and wires, interior.
Conduits, interior.
Connecting wires.
Current-controlling instruments.
Electric generators and motors.
Electric meters.
Engines, stationary.
Fuses and mechanical protectors.
Rectifiers.
Rheostats.
Sending and receiving instruments.
Switchboards.
Testing outfits.
Transformers.

DETAILS OF TELEGRAPH AND TELEPHONE OUTSIDE PLANT.

(See special instructions, section 22.)

Aerial attachments.
Braces.
Brackets.
Cable boxes and appurtenances.
Cables and wires, aerial.
Conduits and appurtenances.
Cross arms.
Guy stubs.
Guy wires.
Insulators.
Poles.
Submarine cables and connections.
Telephone pole boxes.
Towers.
Underground cables and connections.

NOTE.—The salaries, rent, other office expenses, and traveling expenses of superinte telegraph and telephone, their assistants, clerks, and attendants, when engaged both in ma and operating telegraph and telephone lines, shall be apportioned equally between this acc account No. 407, "Telegraph and telephone operation."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTION

248. TELEGRAPH AND TELEPHONE LINES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of telegraph and telephone lines. (See special instructions, section 8.)

249. SIGNALS AND INTERLOCKERS.

This account shall include the cost of repairing signals and interlockers governing the movement of trains, including salaries, rent, and other office expenses, and the traveling expenses of division signal engineers, signal supervisors, their assistants, clerks, and attendants; also the cost of special tools furnished for such work.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF SIGNALS AND INTERLOCKERS.

(See special instructions, section 22.)

Air compressors.
Batteries.
Boilers.
Distant signals.
Dynamos.
Engines, stationary.
Gates at crossings of other railroads.
Home signals.
Interlocker buildings.
Interlocker machinery.
Interlocker mechanism.
Levers.
Power transmission lines.
Rail bonds.
Railway-crossing signals.
Relays.
Semaphores.
Signal and switch levers.
Signal arms.
Signal blades.
Signal bridges.
Signal buildings.
Signal lamp brackets and connections.
Signal lamps.
Signal machinery.
Signal poles and foundations.
Signal pulleys and foundations.
Special appliances.
Station signals.
Train-order signals.
Wiring.

NOTE.—The cost of repairing track material, such as switches, special track fastenings, split rails, and frogs used in connection with interlockers, shall be charged to account No. 216, "Other track material."

250. SIGNALS AND INTERLOCKERS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of signals and interlockers. (See special instructions, section 8.)

251. POWER PLANT DAMS, CANALS, AND PIPE LINES.

This account shall include the cost of repairing dams, canals, and pipe lines and accessories devoted to the utilization of water power for the operation of trains and cars, and to furnish power, heat, and light for general purposes.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF DAMS, CANALS AND PIPE LINES.

(See special instructions, section 22.)

Aqueducts.
Bridges.
Fences.
Footbridges.
Fore bays.
Gates.
Grids.
Inlet valves.
Penstocks.
Reservoirs.
Roadways.
Sluices.
Valves.
Viaducts.
Walls.

252. POWER PLANT DAMS, CANALS, AND PIPE LINES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power plant dams, canals, and pipe lines. (See special instructions, section 8.)

253. POWER PLANT BUILDINGS.

This account shall include the cost of repairing the buildings of power plants which furnish power for the operation of trains and cars, and furnish power, heat, and light for general purposes, including distinct power plant buildings at shops;

drainage, water, and sewer pipes and their connections; miscellaneous furniture and fixtures; and the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of repairing machinery and other apparatus in general power plants shall be included in account No. 304, "Power plant machinery."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by power plant employees, shall not be included in this account.

254. POWER PLANT BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power plant buildings. (See special instructions, section 8.)

255. POWER SUBSTATION BUILDINGS.

This account shall include the cost of repairing buildings of power substations, including storage-battery stations, used to transform power for the operation of trains and cars, and to furnish power, heat, and light for general purposes; drainage, water, and sewer pipes and their connections; fixtures, including wiring for lighting and heating; and miscellaneous furniture and fixtures; also the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of repairing substation apparatus for transforming or storing power in power substations shall be included in account No. 306, "Power substation apparatus."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by substation employees, shall not be included in this account.

256. POWER SUBSTATION BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power substation buildings. (See special instructions, section 8.)

257. POWER TRANSMISSION SYSTEMS.

This account shall include the cost of repairing systems for transmitting high-tension power from power houses to the point where transformed for use, including the cost of work-train service and special tools furnished for such work.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER TRANSMISSION SYSTEMS.

(See special instructions, section 22.)

Cables.
Cut-outs (not at power houses and substations).
Feed wires.
Guard wires.
Insulators and connections.
Span wires.
Switchboards (not at power houses and substations).
Transformers (not at power houses and substations).

NOTE A.—The cost of repairing track material, such as insulated rail splices used in connection with transmission systems shall be charged to account No. 216, "Other track material."

NOTE B.—When the electric current generated or received is changed by means of (*a*) rotary converters, (*b*) motor generator sets, or (*c*) static transformers (substation apparatus), that portion of the line or outside conductor system carrying current other than the operating kind or voltage shall be classed as transmission system. When the electric current is generated or received and used substantially unchanged in voltage and kind, the line or outside conductor system, including any feeders, trolley wires, booster circuits, and supplementary return, shall be classed wholly as distribution system. Tie lines between generating stations and substations should follow the same rule as other lines.

258. POWER TRANSMISSION SYSTEMS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power transmission lines. (See special instructions, section 8.)

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

259. POWER DISTRIBUTION SYSTEMS.

This account shall include the cost of repairing electric distribution systems, whether overhead, surface, or underground, for conveying low-tension power for propelling trains and cars, and for power, heat, light, and general purposes. (Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER DISTRIBUTION SYSTEMS.

(See special instructions, section 22.)

Compressed-air pipe lines.
Cut-outs (not at power houses and substations).
Feed wires.
Guard wires.
Insulators and connections.
Overhead trolley wires.
Rail bond plugs.
Rail bonds.
Rail insulating devices.
Span wires.
Steam pipe lines.
Switchboards (not at power houses and substations).
Third rail.
Third-rail braces.
Third-rail insulation and protection.
Third-rail supports.

NOTE A.—The cost of repairing and replacing track material, such as insulated rail splices, used in connection with electric distribution systems, shall be charged to account No. 216, "Other track material."

NOTE B.—The cost of repairing that portion of distribution systems located in shop buildings and station and office buildings shall be included in the cost of repairing the buildings. The cost of repairing distribution systems in plants used exclusively for operating signals and interlockers shall be included in account No. 249, "Signals and interlockers."

NOTE C.—When the electric current generated or received is changed by means of (*a*) rotary converters, (*b*) motor generator sets, or (*c*) static transformers (substation apparatus), that portion of the line or outside conductor system carrying current other than the operating kind or voltage shall be classed as transmission system. When the electric current is generated or received and used substantially unchanged in voltage and kind, the line or outside conductor system, including any feeders, trolley wires, booster circuits, and supplementary return, shall be classed wholly as distribution system. Tie lines between generating stations and substations should follow the same rule as other lines.

260. POWER DISTRIBUTION SYSTEMS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power distribution systems. (See special instructions, section 8.)

261. POWER LINE POLES AND FIXTURES.

This account shall include the cost of repairing and replacing electric line poles, cross arms, and insulating pins; brackets and other pole fixtures; and braces and other supports for holding poles in position; also the cost of repairing structures primarily for supporting the overhead electric construction. (Note carefully special instructions, sections 2 and 3.)

262. POWER LINE POLES AND FIXTURES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power line poles and fixtures. (See special instructions, section 8.)

263. UNDERGROUND CONDUITS.

This account shall include the cost of repairing conduits required for underground electric wires and cables of electric railway construction, including manholes, sewer connections, sewer traps, and all other material necessary for the maintenance of the conduit system. (Note carefully special instructions, sections 2 and 3.)

264. UNDERGROUND CONDUITS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of underground conduits. (See special instructions, section 8.)

265. MISCELLANEOUS STRUCTURES.

This account shall include the cost of repairing permanent structures, not provided for elsewhere, including the cost of repairing all furniture and fixtures to equip them for use. It shall also include the cost of maintenance of the grounds appurtenant to such structures.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—When separable the cost of maintaining structures which are rented to other companies or individuals shall be charged to the income account in which is included the rent received for use of the structures.

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by employees regularly working in miscellaneous buildings, shall not be included in this account.

266. MISCELLANEOUS STRUCTURES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of miscellaneous structures. (See special instructions, section 8.)

267. PAVING.

This account shall include the cost of repairing paving about tracks in public highways and streets through which the carrier's tracks are laid.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—The cost of repairing paving upon the carrier's lands, within the grounds of buildings or other structures, shall be included in the accounts provided for the repairs of the structures, and the cost of repairing paving upon the carrier's right of way at crossings in account No. 225, "Crossings and signs."

268. PAVING—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of paving. (See special instructions, section 8.)

269. ROADWAY MACHINES.

This account shall include the cost of repairing roadway machines which are used for the repairs of roadway and structures.

(Note carefully special instructions, sections 2 and 3.)

LIST OF ROADWAY MACHINES.

(See special instructions, section 22.)

Boilers, portable.
Cars, hand.
Cars, lever.
Cars, motor inspection.
Cars, push.
Cars (small), crane, for supply yards and general use.
Concrete mixers.
Ditching machines.
Dredging machines.
Engines, portable.
Grading outfits.
Hydraulic outfits.
Jacks, hydraulic.
Log loaders.
Pile drivers.
Plows, unloading.
Rail unloaders.
Rock crushers.
Steam rollers.
Timber trucks.
Velocipedes.

NOTE A.—The cost of repairing machines in the maintenance of equipment shops shall be included in account No. 302, "Shop machinery," as provided for therein.

NOTE B.—The cost of repairing roadway machines, such as pile drivers, log loaders, hoisting engines, and concrete mixers, when permanently mounted for movement on carrier's tracks, shall be included in account No. 326, "Work equipment—Repairs."

270. ROADWAY MACHINES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of roadway machines. (See special instructions, section 8.)

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

271 SMALL TOOLS AND SUPPLIES.

This account shall include:

ROADWAY AND TRACK TOOLS.—The cost of roadway tools (except special tools provided for elsewhere), including the cost of repairing such tools.

(Note carefully special instructions, sections 2 and 3.)

LIST OF ROADWAY AND TRACK TOOLS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Adzes. | Hammers, napping. | Rakes. |
| Anvils. | Hammers, paving. | Rope. |
| Augers. | Hammers, spiking. | Saws, crosscut. |
| Axes. | Handles for tools. | Saws, hand. |
| Ballast forks. | Hatchets. | Scrap boxes. |
| Bars, claw. | Hoes. | Scythes. |
| Bars, crow. | Jack levers. | Shovels. |
| Bars, lining. | Jacks, ratchet. | Sickles. |
| Bars, pinch. | Jacks, screw. | Sledges. |
| Bars, raising. | Jacks, track. | Spades. |
| Bars, tamping. | Kegs, water. | Spike mauls. |
| Braces and bits. | Ladders. | Spike pullers. |
| Brooms. | Lanterns and fixtures. | Spot boards. |
| Brush hooks. | Lawn mowers. | Squares. |
| Cable stretchers. | Levels. | Straightening machines. |
| Cables. | Lines for ditching. | Tape lines. |
| Cans, oil. | Nippers. | Thermometers for laying rail. |
| Cans, water. | Oilstones. | Tongs. |
| Cant hooks. | Padlocks. | Tool boxes. |
| Chains. | Pails, water. | Torches. |
| Chisels, track. | Paint brushes. | Track gauges. |
| Chisels, wood. | Picks, clay. | Track levels. |
| Curbing hooks. | Picks, tamping. | Vises. |
| Dippers. | Pike poles. | Weed spuds. |
| Drawing knives. | Post-hole diggers. | Wheelbarrows. |
| Drill bits. | Post-hole tampers. | Whetstones. |
| Drills (portable). | Punches. | Wood mallets. |
| Flags, signal. | Rail benders. | Wrenches, monkey. |
| Furnaces (portable). | Rail tongs. | Wrenches, track. |
| Grindstones. | | |

ROADWAY AND TRACK SUPPLIES.—The cost of supplies consumed in connection with the operation of roadway machines while used in repairs of roadway and tracks; and cost of supplies used by trackwalkers, track watchmen, and roadway and track repair men.

ITEMS OF ROADWAY SUPPLIES.

(See special instructions, section 22.)

Alcohol for hydraulic jacks.
Fuel for heating tool and other section houses.
Fuel for portable forges used in roadway and track work.
Gasoline for motor cars.
Oatmeal and ice for drinking water used by roadway and track repair men.
Oil and waste for hand cars, lever cars, motor inspection cars, and push cars.
Oil and wicks for lanterns used by trackwalkers, track watchmen, and roadway and track repair men.
Oil and wicks for lighting tool and other section houses.
Torpedoes used by trackwalkers, track watchmen, and roadway and track repair men.
Water for section houses.

272 REMOVING SNOW, ICE, AND SAND.

This account shall include the cost of keeping track and roadway clear of snow, ice, and sand.

It shall include cost of preventing accumulation, such as the cost of distributing, setting up, inspecting, taking down, and regathering portable snow and sand fences; and cost of tools furnished for the purpose; also cost of storing fences.

It shall include cost of removing accumulations of snow, ice, and sand, cost of snow-plow and flanger service, and of work-train service; cost of applying and

removing flangers from locomotives and cars, and of slatting pilots; cost of salt to keep switches clear; and cost of meals and lodging for men employed in removal service.

(Note carefully special instructions, sections 2 and 3.)

273. ASSESSMENTS FOR PUBLIC IMPROVEMENTS.

This account shall include the carrier's proportion of the cost of repairing public improvements, such as sewers, curbs, gutters, pavement and sidewalks, including costs of such repairs made under Government regulations by the carrier's own employees.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—The cost of repairs, required by Government authority, to paving between rails and adjacent to tracks laid through public highways shall be included in account No. 267, "Paving."

274. INJURIES TO PERSONS.

This account shall include expenses on account of injuries to persons which occur directly in connection with the maintenance of way and structures, including injuries occurring in connection with the operation of work trains in such service, and injuries caused by defective highways within the right of way.

It shall also include expenses on account of injuries to employees incurred while demolishing structures, the maintenance of which would be chargeable to Maintenance of Way and Structures; services of employees and others called in consultation in connection with claim adjustments; pay and expenses of employees while engaged as witnesses at inquests and lawsuits; and a suitable proportion of donations made to hospitals.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Artificial limbs.
Carriage fees.
Claim adjusters' and clerks' services.
Claim adjusters' office expenses.
Compensation for injuries or death.
Final judgments, including plaintiffs' court costs.
Funeral expenses.
Hospital attendance.
Medical and surgical services.
Medical and surgical supplies.
Notarial fees.
Nursing.
Railway transportation.
Undertakers' services.
Undertakers' supplies.
Witnesses' fees and expenses at inquests and lawsuits.

NOTE A.—Expenses incident to personal injury suits, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—Amounts donated by a carrier to hospitals shall be distributed, 25 per cent to account No. 274, "Injuries to persons"; 25 per cent to account No. 332, "Injuries to persons"; and 50 per cent to account No. 420, "Injuries to persons."

NOTE C.—The pay, office rent, office expenses, and other expenses of claim adjusters, claim clerks and others in charge of or engaged in connection with claim cases, when not assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged.

275. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Maintenance of Way and Structures; also premiums on fidelity bonds of employees whose pay is chargeable to Maintenance of Way and Structures. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies in reimbursement for losses under such reinsurance.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

## 276. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with maintenance of way and structures.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cross-section books.
Cross-section paper.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Profile books and paper.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper.
Wringers for copying presses.

NOTE—The cost of dictionaries, periodicals, technical books, etc., shall be included in the appropriate superintendence accounts.

## 277. OTHER EXPENSES.

This account shall include all expenses in connection with maintenance of way and structures not provided for elsewhere.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Pay and expenses of maintenance of way employees attending conferences with officers in connection with wage disputes.
Fees paid arbitrators in wage disputes with maintenance of way employees.
Payments to maintenance of way employees for time absent on account of sickness, when not compensation for personal injuries.
Gratuities paid to persons for discovering defective rails, etc.

## 278. MAINTAINING JOINT TRACKS YARDS, AND OTHER FACILITIES—DR.

This account shall include the carrier's proportion of the costs incurred by others in maintaining joint tracks, yards, terminals, and other facilities.

NOTE.—The purpose of this account is to show the amounts accruing against the carrier for its proportion of the cost of maintaining tracks, yards, and other roadway and structure facilities maintained by others and in the joint use of which the carrier participates. (See special instructions section 9.)

279. MAINTAINING JOINT TRACKS, YARDS, AND OTHER FACILITIES—CR.

This account shall include amounts chargeable to others as their proportions of the cost incurred by the carrier in maintaining joint tracks, yards, terminals, and other facilities.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the cost of maintaining tracks, yards, and other roadway and structure facilities maintained by the carrier and in the joint use of which others participate. (See special instructions, section 9.)

## II. MAINTENANCE OF EQUIPMENT.

The primary accounts included in this general account are designed to show the expenses of maintaining the carrier's equipment and the carrier's expense for the repairs of other equipment used in its operations, also the cost of maintaining the fixed improvements which are classified as shop and power plant machinery, and power substation apparatus. The repair accounts shall include foreign roads' freight charges for transporting the carrier's equipment to shops for repairs and for transporting such equipment to the carrier's line after repairs have been made. No charge shall be made to these accounts for transporting equipment in the carrier's transportation service trains to shops for repairs or from shops after repairs have been made.

The accounts for maintenance of equipment shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to sleeping car operations, water-line operations, dining and buffet service, producing power sold, and other miscellaneous operations.

301. SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in the maintenance of equipment.

LIST OF OFFICERS.

(See special instructions, section 22.)

Vice president.
Assistant vice president.
General superintendent of motive power.
Assistant general superintendent of motive power.
Mechanical superintendent.
Superintendent of motive power.
Assistant superintendent of motive power.
Mechanical engineer.
Assistant mechanical engineer.
Chief chemist.
General equipment inspector.
Engineer of tests.
Supervisor of car department.
Electrical engineer.
Assistant electrical engineer.
Chemist and assistant chemist.
Master car builder.
Master mechanic.
General foreman.
Chief car inspector.
Inspector of passenger-train cars.
General car inspector.
Traveling boiler inspector.

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and other employees in the offices and on business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Chief motive power clerks.
Chief clerks.
Draftsmen.
Stenographers.
Motive power clerks.
Shop clerks.
Messengers.
Cooks.
Porters.

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account, and amounts paid to detective agencies and others for investigations in connection with repairs of equipment.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.
Barometers.
Books for office use.
Business car service.
Drafting instruments.
Drafting supplies.
Engineering supplies.
Fees and dues in technical associations.
Furniture repairs and renewals.
Heating.
Lighting.
Official train service.
Periodicals and newspapers.
Power.
Provisions for business cars.
Rent of offices.
Repair of rented offices.
Telegraph service.
Telephone service.
Traveling expenses.
Water and ice.

NOTE A.—When employees designated above are engaged on construction or other work not chargeable to Maintenance of Equipment, their pay and expenses while thus employed shall be charged to accounts covering the specific work on which engaged.

NOTE B.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE C.—The cost of stationery purchased for maintenance of equipment offices is chargeable to account No. 334, "Stationery and printing."

NOTE D.—The pay of general foremen in small shops, who exercise direct supervision over all departments, unassisted by departmental foremen, shall be apportioned through clearing account "Shop expenses."

## 302. SHOP MACHINERY.

This account shall include the cost of repairing machinery and other apparatus, including special foundations, in shops and enginehouses.

(Note carefully special instructions, sections 2 and 3.)

LIST OF SHOP MACHINERY.

(See special instructions, section 22.)

Air compressors.
Ash conveyors.
Belting.
Blowers.
Boilers for furnishing power.
Boring machines.
Cars, small motor.
Cars, push.
Cranes.
Drill presses.
Drilling machines.
Drop tables.
Forges.
Framing machines.
Furnaces.
Grinding and polishing machines.
Hoists.
Hydraulic jacks.
Lathes.
Lifting magnets.
Metal chimneys.
Milling machines.
Motors.
Pipe cutting and threading machines.
Planers.
Pneumatic hammers.
Power machinery, where no distinct power plant is provided.
Punches.
Riveters.
Saws.
Shafting.
Shapers.
Slotters.
Stationary engines.
Steam hammers.
Vises.
Welding machines.
Woodworking machines.

NOTE A.—The cost of repairing power plant machinery for shop power when located in distinct buildings shall be included in account No. 304, "Power plant machinery."

NOTE B.—The cost of repairing boilers used exclusively for heating shall be included in the appropriate repair accounts for buildings.

NOTE C.—The cost of small tools which are soon worn out, when used by mechanics on miscellaneous work, shall be included in clearing account "Shop expenses," and when used on repairs of equipment shall be included in the appropriate accounts for repairs of equipment.

NOTE D.—The cost of repairing machinery and tools in shops used exclusively for maintenance of way and structures shall be included in account No. 229, "Roadway buildings."

## 303. SHOP MACHINERY—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of shop machinery. (See special instructions, section 8.)

304. POWER PLANT MACHINERY.

This account shall include the cost of repairing machinery and other apparatus, including special foundations, for generating power in power plants used for the operation of trains and cars and to furnish power, heat, and light for general purposes. It shall also include the cost of repairing machinery and other apparatus for transforming and storing power, when such apparatus is contained in a power plant.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER PLANT MACHINERY.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Ammeters. | Engine-room appliances and tools. | Purifiers. |
| Batteries. | Feed-water heaters. | Rheostats. |
| Belting. | Furnaces. | Sewer connections. |
| Boiler-room appliances and tools. | Generators. | Shafting. |
| Boilers and fittings. | Globes. | Stationary engines. |
| Boosters. | Hangers. | Steam distribution systems. |
| Cables. | Heating apparatus. | Steam fittings. |
| Circuit breakers. | Hoists. | Switchboards. |
| Clutches. | Insulators. | Tanks. |
| Conductors. | Lamps. | Transformers. |
| Cranes. | Lighting apparatus. | Turbines. |
| Draft machinery. | Lubricating devices. | Voltmeters. |
| Dynamos. | Mechanical stokers. | Water meters. |
| Economizers. | Piping. | Water wheels. |
| Electric-power distribution systems, interior. | Poles. | Wires from generators or transformers to switchboards. |
| | Pumps. | |

NOTE A.—The cost of repairing power apparatus in shops where no distinct plant is provided shall be included in account No. 302, "Shop machinery."

NOTE B.—The cost of repairing power apparatus in stations and offices used solely for station and office purposes, where no distinct plant is provided, shall be included in account No. 227, "Station and office buildings."

NOTE C.—The cost of repairing power apparatus in plants used solely for operating signals and interlockers shall be included in account No. 249, "Signals and interlockers."

305. POWER PLANT MACHINERY—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power plant machinery. (See special instructions, section 8.)

306. POWER SUBSTATION APPARATUS.

This account shall include the cost of repairing machinery and other apparatus, including special foundations, for transforming or storing power in power substations used for the operation of trains and cars and for power, heat, and light for general purposes.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER SUBSTATION APPARATUS.

(See special instructions, section 22.)

| | |
|---|---|
| Rotary converters. | Switchboards. |
| Storage batteries. | Transformers. |

NOTE.—When machinery and other apparatus for transforming and storing power are located in a power plant the cost of repairs shall be included in account No. 304, "Power plant machinery."

307 POWER SUBSTATION APPARATUS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power substation apparatus. (See special instructions, section 8.)

308. STEAM LOCOMOTIVES—REPAIRS.

This account shall include the cost of repairing transportation service steam locomotives and tenders, including all appurtenances, and the cost of small hand tools used in repair work.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

This account shall also include the cost of work-train service for the transportation of locomotives without steam to shops for repairs, including the pay and expenses of caretakers, and the pay and expenses of caretakers of locomotives without steam which are hauled in transportation service trains to shops for repairs; also notarial fees in connection with reports on conditions of locomotives

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

LIST OF APPURTENANCES TO LOCOMOTIVES.

(See special instructions, section 22.)

| | |
|---|---|
| Air-brake equipment and hose. | Head lamps. |
| Arm rests. | Packing (except for lubricating). |
| Awnings. | Pneumatic sanding equipment. |
| Brake fixtures. | Seat boxes. |
| Cab cushions. | Speed recorders. |
| Cab lamps. | Steam-gauge lamps. |
| Clocks. | Steam-heat equipment and hose. |
| Coal boards. | Storm doors. |
| Fire extinguishing apparatus. | Tool boxes. |
| Gongs. | Train-signal equipment and hose. |

NOTE A.—The cost of inspecting smokestacks and ash pans of locomotives in service shall be included in the appropriate enginehouse expense accounts.

NOTE B.—The cost of repairing steam locomotives and tenders of foreign lines, waybilled as freight, and damaged in transit shall be charged to account No. 418, "Loss and damage—Freight"; and the cost of repairing steam locomotives and tenders of foreign lines having trackage rights over the carrier's line, damaged by collision, wreck, or other cause, for which the carrier is liable, shall be charged to account No. 416, "Damage to property."

NOTE C.—The cost of running locomotives under steam to shops for repairs in connection with transportation service shall be included in the cost of the service in connection with which the movement occurs.

NOTE D.—The cost of repairing steam locomotives used solely in work service in connection with operations shall be included in account No. 326, "Work equipment—Repairs." The cost of repairing locomotives on account of construction work shall be included in the cost of the work. (See general instructions for the classification of investment in road and equipment, section 4c.)

309. STEAM LOCOMOTIVES—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of steam locomotives. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any locomotive shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776 "Accrued depreciation—Equipment."

310. STEAM LOCOMOTIVES—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of steam locomotives retired from service and the amount of accrued depreciation charged on account of such retired locomotives to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Steam locomotives permanently retired from service, but held pending disposition, shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

311. OTHER LOCOMOTIVES—REPAIRS.

This account shall include the cost of repairs of transportation service locomotives other than steam locomotives, analogous to those set forth for steam locomotives in account No. 308, "Steam locomotives—Repairs."

(Note carefully special instructions, sections 2 and 3.)

312. OTHER LOCOMOTIVES—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of other than steam locomotives. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any locomotive shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

313. OTHER LOCOMOTIVES—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of locomotives other than steam locomotives retired from service and the amount of accrued depreciation charged on account of such retired locomotives to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Locomotives permanently retired from service but held pending disposition shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

314. FREIGHT-TRAIN CARS—REPAIRS.

This account shall include the cost of repairing freight-train cars and appurtenances, and cost of repairs of the freight car feature of motor cars engaged in transportation service; also cost of small hand tools used in repairs. This account shall also include the net loss sustained on account of the destruction of foreign freight cars in the carrier's transportation service and amounts paid to others for repairs of freight cars for which the carrier is liable.

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

LIST OF FREIGHT-TRAIN CARS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Ballast (commercial). | Furniture. | Platform. |
| Beer. | Gondola. | Poling. |
| Box. | Gondola (hopper). | Poultry. |
| Cabin. | Gondola (long). | Produce. |
| Caboose. | Gun truck. | Rack. |
| Charcoal. | Hay. | Refrigerator. |
| Coal. | Lime. | Stock. |
| Coke. | Logging. | Tank (in commercial service). |
| Dump (commercial). | Oil tank. | Water (in commercial service). |
| Flat. | Ore. | Work (in commercial service). |
| Fruit. | | |

LIST OF APPURTENANCES TO FREIGHT-TRAIN CARS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Air-brake equipment, including hose. | Heating equipment. | Speed recorders. |
| Cooking equipment and utensils. | Ice boxes. | Train-signal equipment, including hose. |
| Cushions. | Lamps and fixtures. | Water tanks. |
| | Seats. | |

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

NOTE A.—The cost of candles, wicks, lamp chimneys, globes, and shades for oil or other lamps in freight-train cars shall be charged to account No. 402, "Train supplies and expenses."

NOTE B.—The cost of repairing freight-train cars of foreign lines waybilled as freight and damaged in transit shall be charged to account No. 418, "Loss and damage—Freight"; and the cost of repairing freight-train cars of foreign lines having trackage rights over the carrier's line, when damaged by collision, wreck, or other cause, for which the carrier is liable, shall be charged to account No. 416, "Damage to property."

315. FREIGHT-TRAIN CARS—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of freight-train cars. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any freight-train car shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

316. FREIGHT-TRAIN CARS—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of freight-train cars retired from service and the amount of accrued depreciation charged on account of such retired cars, to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Freight-train cars permanently retired from service, but held pending disposition, shall be written out of service, and carried in an appropriate suspense account at an equitable valuation.

317. PASSENGER-TRAIN CARS—REPAIRS.

This account shall include the cost of repairing passenger-train cars and appurtenances and passenger car features of motor cars used in transportation service; small hand tools used in repairs; the net loss sustained on account of the destruction of foreign passenger-train cars in the carrier's transportation service, and amounts paid others for repairs of passenger-train cars for which the carrier is liable.

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

LIST OF PASSENGER-TRAIN CARS.

(See special instructions, section 22.)

Baggage.
Baggage-express.
Baggage-mail.
Baggage-mail-express.
Buffet.
Café.
Chair.
Club.
Colonist.
Combination passenger and baggage.
Dining.
Express.
Immigrant.
Library.
Mail.
Milk.
Observation.
Parlor.
Parlor-baggage.
Passenger.
Passenger-baggage.
Passenger-baggage-mail.
Postal.
Refrigerator-express.
Sleeping.
Smoking.
Tourist.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

LIST OF APPURTENANCES TO PASSENGER-TRAIN CARS.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Air-brake equipment, including hose. | Ice boxes. | Table glassware. |
| Bedding. | Ice tanks. | Table linen. |
| Chairs. | Kitchen equipment and utensils. | Table silver. |
| Coat hooks. | Lighting equipment. | Toilet equipment. |
| Curtains and fixtures. | Mail catchers. | Train-signal equipment, including hose. |
| Cushions. | Parcel racks. | Water tanks. |
| Electric bells. | Ranges and boilers. | |
| Floor coverings. | Seats. | |
| Heating equipment and steam-heat hose. | Speed recorders. | |
| | Steam heat hose. | |
| | Table china. | |

NOTE A.—The cost of candles, wicks, and lamp chimneys, and of globes and shades for electric and other lights in passenger-train cars shall be charged to account No. 402, "Train supplies and expenses."

NOTE B.—The cost of repairing passenger-train cars of foreign lines, which are waybilled as freight and have been damaged in transit, shall be charged to account No. 418, "Loss and damage—Freight," and the cost of repairing passenger-train cars of foreign lines having trackage rights over the carrier's line, when damaged by collision, wreck, or otherwise, for which the carrier is liable, shall be charged to account No. 416, "Damage to property."

318. PASSENGER-TRAIN CARS—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of passenger-train cars. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any passenger-train car shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

319. PASSENGER-TRAIN CARS—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of passenger-train cars retired from service and the amount of accrued depreciation charged on account of such retired cars to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Passenger-train cars permanently retired from service, but held pending disposition, shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

320. MOTOR EQUIPMENT OF CARS—REPAIRS.

This account shall include the cost of repairing motor equipment affixed to cars; also cost of small hand tools used in repairs. The cars to which this account has reference are distinct from independent locomotives used for the propulsion of trains.

(Note carefully special instructions, sections 2 and 3.)

ITEMS OF MOTOR EQUIPMENT.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Batteries, storage. | Lightning arresters. | Switches. |
| Circuit breakers. | Motors. | Third-rail contact. |
| Controllers. | Overload switches. | Trolley poles. |
| Engines, internal-combustion. | Rheostats. | Trolleys. |
| Generators. | | |

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

321. MOTOR EQUIPMENT OF CARS—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of the motor equipment of cars. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to the motor equipment of cars shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

322. MOTOR EQUIPMENT OF CARS—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of motor equipment of cars retired from service, and the amount of accrued depreciation charged on such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—The motor equipment of cars permanently retired from service but held pending disposition shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

323. FLOATING EQUIPMENT—REPAIRS.

This account shall include the cost of repairing floating equipment (other than work equipment), including appurtenances, and cost of small hand tools used in repairs.

The pay and expenses of captains and engineers and of boat employees, while engaged on maintenance of floating equipment, shall be included in this account.

(Note carefully special instructions, sections 2 and 3.)

LIST OF FLOATING EQUIPMENT.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Barges. | Lighters. | Steamboats. |
| Canal boats. | Power launches. | Steamships. |
| Car and other floats. | Power lighters. | Transfer boats. |
| Ferryboats. | Scows. | Tugboats. |

LIST OF APPURTENANCES, TOOL EQUIPMENT, AND FURNITURE.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Anchors. | Flue cleaners. | Racks. |
| Axes. | Furniture. | Railings. |
| Barometers. | Gangplanks. | Rakes. |
| Beds and bedding. | Hatchets. | Rigging. |
| Binnacle lamps. | Heating equipment. | Safes. |
| Blocks and tackle. | Hoisting equipment. | Sails. |
| Boilers and foundations. | Hooks. | Scales. |
| Cables. | Keys. | Seats, chairs, and cushions. |
| Capstan bars. | Kitchen equipment. | Shovels. |
| Carpets. | Life preservers. | Slice bars and pokers. |
| Charts. | Lighting equipment. | Spyglasses. |
| China, crockery, and glassware. | Linen. | Steam distribution systems. |
| Chronometers. | Lines. | Steering equipment. |
| Clocks. | Logs. | Telescopes. |
| Compasses. | Machinery and foundations. | Ticket cases. |
| Counters. | Masts. | Tool boxes. |
| Desks. | Office furniture. | Tools, miscellaneous. |
| Engines and foundations. | Oil cans. | Tracks on car floats. |
| Fire buckets. | Pianos and other musical instruments. | Ventilating equipment. |
| Fire extinguishers. | Pumps. | Wrenches. |
| Floor coverings. | | |

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

NOTE A.—When the compensation for the use of floating equipment includes rent, maintenance, and operation, the portion covering rent shall be included in income account No. 539, "Rent for floating equipment," the portion covering repairs shall be included in this account, the portion covering depreciation shall be included in account No. 324, "Floating equipment—Depreciation," and the portion covering operation shall be included in account No. 408, "Operating floating equipment;" or in the primary accounts in general account V, Transportation—Water Line, as may be appropriate.

NOTE B.—The cost of repairs resulting from casualties shall be charged to the casualty accounts when covered by insurance and to insurance reserves to the extent of the accruals therein when such reserves have been provided for the damage to property. Any part of such cost not recoverable from underwriters or chargeable to insurance reserves shall be charged to the repair account.

324. FLOATING EQUIPMENT—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of floating equipment other than work equipment. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any floating equipment shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

NOTE A.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

NOTE B.—When the compensation for the use of floating equipment includes rent, maintenance, and operation, the portion covering rent shall be included in income account No. 539, "Rent for floating equipment," the portion covering repairs shall be included in account No. 323, "Floating equipment—Repairs," the portion covering depreciation shall be included in this account, and the portion covering operation shall be included in account No. 408, "Operating floating equipment," or in the primary accounts in general account V, Transportation—Water Line, as may be appropriate.

325. FLOATING EQUIPMENT—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of floating equipment, other than work equipment, retired from service and the amount of accrued depreciation charged on account of such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—When floating equipment is permanently retired from service but held pending disposition, it shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

326. WORK EQUIPMENT—REPAIRS.

This account shall include the cost of repairing rail and floating work equipment, including appurtenances, and cost of small hand tools used in repairs.

The cost of fitting up commercial cars for work service in connection with maintenance and operation; the cost of refitting them for commercial service; the cost of repairs to locomotives while in service for repairs of road and equipment; and the cost of repairs to foreign cars damaged while in such service shall be included in this account; also amounts paid in settlement for such cars destroyed in such service.

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

LIST OF WORK EQUIPMENT—RAIL.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Air-brake instruction cars. | Grading cars. | Scraper cars. |
| Ballast cars. | Gravel cars. | Snow dozers. |
| Ballast unloader cars. | Indicator cars. | Snow drags. |
| Boarding cars. | Locomotive tanks used as water cars. | Snow plows (not attached to but moved by locomotives). |
| Bridge cars. | Locomotives. | Sprinkling cars. |
| Business cars. | Officer's cars. | Steam shovels. |
| Camp cars. | Outfit cars. | Steam wrecking derricks. |
| Cinder cars. | Painters' cars. | Supply cars. |
| Concrete mixers (mounted). | Pay cars. | Sweeper cars. |
| Derrick cars. | Pile drivers (mounted). | Tool and block cars. |
| Dirt spreaders (mounted). | Rail saws (mounted). | Tool cars. |
| Ditching cars. | Salt cars. | Water cars. |
| Dump cars. | Sanding cars. | Weed burners (mounted). |
| Dynamometer cars. | Scale test cars. | Wrecking cars. |
| Gas-tank cars. | | |

APPURTENANCES TO WORK EQUIPMENT—RAIL.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Air-brake equipment. | Flue cleaners. | Oil cans. |
| Beds and bedding. | Hatchets. | Rakes. |
| Blocking. | Heating equipment. | Ranges. |
| Blocks and tackle. | Hooks. | Shovels. |
| Boilers on cars. | Jacks. | Slice bars and pokers. |
| Bunks, seats, and chairs. | Kitchen utensils. | Tool boxes. |
| Chains. | Lighting equipment. | Tools, miscellaneous. |
| China, crockery, and glassware. | Linen. | Train-signal equipment. |
| Cushions. | Lines. | Wrecking trucks. |
| Engines on cars. | Machinery on cars. | Wrenches. |

LIST OF WORK EQUIPMENT—FLOATING.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Derricks. | Dredges. | Pile drivers. |

APPURTENANCES TO WORK EQUIPMENT—FLOATING.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Anchors. | Floor coverings. | Oil cans. |
| Axes. | Flue cleaners. | Pumps. |
| Barometers. | Gangplanks. | Rakes. |
| Beds and bedding. | Hatchets. | Rigging. |
| Blocks and tackle. | Heating equipment. | Sails. |
| Boilers and foundations. | Hoisting equipment. | Seats and chairs. |
| Cables. | Hooks. | Shovels. |
| China, crockery, and glassware. | Keys. | Slice bars and pokers. |
| Compasses. | Life preservers. | Steam distribution systems. |
| Cushions. | Lighting equipment. | Steering equipment. |
| Desks. | Linen. | Tool boxes. |
| Engines and foundations. | Lines. | Tools, miscellaneous. |
| Fire extinguishers. | Machinery and foundations. | Wrenches. |
| Fire buckets. | Masts. | |

NOTE.—The cost of repairs to work equipment on account of construction work shall be included in the cost of the construction work on which it is used. (See general instructions for the classification of investment in road and equipment, section 4c.)

327: WORK EQUIPMENT—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of work equipment. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment, determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

Depreciation charges with respect to any work equipment shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

328. WORK EQUIPMENT—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of work equipment retired from service and the amount of accrued depreciation charged on account of such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—When work equipment is permanently retired from service, but held pending disposition, it shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

329. MISCELLANEOUS EQUIPMENT—REPAIRS.

This account shall include the cost of repairing miscellaneous equipment, such as wagons, automobiles, and other highway vehicles, and harness.

(Note carefully special instructions, sections 2 and 3.)

330. MISCELLANEOUS EQUIPMENT—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of miscellaneous equipment. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment, determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the bases used by the carrier for computing these charges shall be included in its annual report to the Commission.

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

331. MISCELLANEOUS EQUIPMENT—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of miscellaneous equipment, including horses, retired from service and the amount of accrued depreciation charged on account of such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Miscellaneous equipment permanently retired from service, but held pending disposition, shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

332. INJURIES TO PERSONS.

This account shall include expenses on account of injuries to persons which occur directly in connection with repairs of equipment.

Services of employees and others called in consultation in relation to claim adjustments, pay and expenses of employees while engaged as witnesses at inquests and lawsuits, and a suitable proportion of donations made to hospitals shall be included in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Artificial limbs.
Carriage fees.
Claim adjusters' and clerks' services.
Claim adjusters' office expenses.
Compensation for injuries or death.
Final judgments, including plaintiffs' court costs.
Funeral expenses.
Hospital attendance.
Medical and surgical services.
Medical and surgical supplies.
Notarial fees.
Nursing.
Railway transportation.
Undertakers' services.
Undertakers' supplies.
Witnesses' fees and expenses at inquests and lawsuits.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

NOTE A.—Expenses incident to personal injury suits, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—Amounts donated by a carrier to hospitals shall be distributed, 25 per cent to account No. 274, "Injuries to persons"; 25 per cent to account No. 332, "Injuries to persons"; and 50 per cent to account No. 420, "Injuries to persons."

NOTE C.—The pay, office rent, and office and other expenses of claim adjusters, claim clerks, and others in charge of or engaged in connection with claim cases, when not assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged.

## 333. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss, through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Maintenance of Equipment; also premiums on fidelity bonds of employees whose pay is chargeable to Maintenance of Equipment. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to the property reinsured by them.

## 334. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with maintenance of equipment.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Parchment paper.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper.
Wringers for copying presses.

NOTE.—The cost of dictionaries, periodicals, technical books, etc., shall be included in the appropriate superintendence accounts.

335. OTHER EXPENSES.

This account shall include expenses in connection with the maintenance of equipment not properly chargeable to other accounts for maintenance of equipment or to clearing accounts such as "Material store expenses" and "Shop expenses."

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Pay and expenses of mechanical department employees attending conferences with officers in connection with mechanical department wage disputes.
Fees paid arbitrators in connection with mechanical department wage disputes.
Payments to mechanical department employees for time absent on account of sickness when not in compensation for personal injuries.

336. MAINTAINING JOINT EQUIPMENT AT TERMINALS—DR.

This account shall include the carrier's proportion of expenses incurred by others in maintaining equipment used for the operation of joint terminals, including the carrier's proportion of expenses of repairing equipment made necessary by accidents in terminals, when such expenses are participated in by more than one party using the joint terminals.

NOTE.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the expense of maintaining equipment at terminals which is maintained by others and in the joint use of which the carrier participates.

337. MAINTAINING JOINT EQUIPMENT AT TERMINALS—CR.

This account shall include amounts chargeable to others as their proportions of expenses incurred by the carrier in maintaining equipment used for the operation of joint terminals, and for expenses of repairing equipment made necessary by accidents in terminals, when such expenses are participated in by more than one party using the joint terminals.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the expense of maintaining equipment at terminals which is maintained by the carrier and in the joint use of which others participate.

## III. TRAFFIC.

The primary accounts included in this general account are designed to show the expenses incurred for advertising, soliciting, and securing traffic for the carrier's lines and for preparing and distributing tariffs governing such traffic.

The accounts for traffic expenses shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to water-line operations.

351. SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in supervising the procurement of traffic, and the preparation and distribution of tariffs, division sheets, and classifications.

LIST OF OFFICERS.

(See special instructions, section 22.)

Vice president.
Assistant to vice president.
Traffic director.
Traffic manager.
General freight agent.
Assistant general freight agent.
Chief of tariff bureau.
Traveling tariff inspector.
Live stock agent.
General passenger agent.
Assistant general passenger agent.
Division passenger agent.
Division freight agent.
General baggage agent.
General express agent.
General express manager.
Coal traffic agent.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and other employees in the offices and on business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Chief clerk. | Stenographers. | Porters. |
| Clerks. | Messengers. | Attendants. |
| File clerks. | Cooks. | |

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Atlases and maps. | Furniture repairs and renewals. | Rent of offices. |
| Barometers. | Heating. | Repairs of rented offices. |
| Bicycles. | Lighting. | Telegraph service. |
| Books for office use. | Official train service. | Telephone service. |
| Business car service. | Periodicals and newspapers. | Traveling expenses. |
| Express charges. | Power. | Water and ice. |
| Fees and dues in commercial and other clubs. | Provisions for business cars. | |

NOTE A.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE B.—The pay and expenses of officers engaged exclusively in soliciting traffic are chargeable to account No. 352, "Outside agencies."

NOTE C.—The cost of stationery for traffic offices is chargeable to account No. 358, "Stationery and printing," except stationery chargeable to accounts Nos. 354, 355, and 356.

352. OUTSIDE AGENCIES.

This account shall include the pay, and the office, traveling, and other expenses of general, commercial, city, and district agents and others soliciting traffic, the employees of their offices, and traveling agents and solicitors located on or off the line of the carrier's road.

City ticket and freight offices, separate from regular station ticket and freight offices, shall be treated as outside agencies; the pay and expenses of the employees therein and the expenses of such offices shall be charged to this account.

Commissions for services pertaining to either freight or passenger business, except commissions paid in lieu of salaries to carrier's agents located upon the carrier's own line (which shall be charged to account No. 373, "Station employees"), shall be included in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

| | |
|---|---|
| Bicycles. | Office supplies. |
| Books for office use. | Periodicals and newspapers. |
| Express charges. | Rent of offices. |
| Furniture repairs and renewals. | Repairs of rented offices. |
| Heating. | Telegraph service. |
| Lighting. | Telephone service. |
| Membership fees and dues in agency associations. | Traveling expenses. |
| Membership fees and dues in commercial clubs. | Water and ice. |

353. ADVERTISING.

This account shall include the cost of advertising for the purpose of securing traffic; pay of advertising agents, their clerks and attendants; rent of offices, and the office, traveling, and other expenses of such employees; also donations to carnivals, local development associations, summer schools, and other gatherings, when made for the purpose of increasing traffic.

ITEMS OF ADVERTISING EXPENSE.

(See special instructions, section 22.)

Advertisements in newspapers.
Advertisements in periodicals.
Bulletin boards and cards.
Card cases.
Customs charges on advertising matter.
Display and other advertising cards.
Distributing folders.
Distributing general notices to shippers.
Distributing time-tables.
Dodgers.
Express charges.
Frames.
Handbills.
Maps used for advertising.
Pamphlets.
Photographs and views.
Postage.
Posters.
Publishing advertising matter.
Publishing folders.
Publishing notices to shippers.
Publishing time-tables.
Racks.

NOTE.—Advertising expenses of industrial and immigration bureaus shall be included in account No. 356, "Industrial and immigration bureaus."

354. TRAFFIC ASSOCIATIONS.

This account shall include the cost to the carrier of participation in traffic associations, including its proportion of the pay of officers and employees of such associations and of their office, stationery and printing, traveling, and other expenses.

LIST OF TRAFFIC ASSOCIATIONS.

(See special instructions, section 22.)

Boards of trade.
Classification bureaus.
Clergy bureaus.
Commercial associations.
Freight associations.
Mileage ticket bureaus.
Passenger associations.
Tariff bureaus.
Ticket validating agencies.

355. FAST FREIGHT LINES.

This account shall include the cost to the carrier of participation in fast freight or dispatch organizations, including its proportion of the pay of officers, soliciting agents, and employees of such organizations, and their office, stationery and printing, traveling, and other expenses.

356. INDUSTRIAL AND IMMIGRATION BUREAUS.

This account shall include the cost to the carrier of industrial and immigration bureaus, including the pay of industrial and immigration agents, and exhibit agents, their clerks and attendants and their office, stationery and printing, traveling, and other expenses.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Advertising.
Agricultural trains.
Dairy trains.
Donations to expositions.
Donations to fairs.
Donations to stock shows.
Exhibits.
Experimental farms.
Good roads trains.
Premiums to fairs.
Premiums to stock shows.

357. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Traffic; also premiums on fidelity bonds of employees whose pay is chargeable to Traffic. (See special instructions, section 2.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account the amount of all claims for injuries to persons and damages to the property covered by its insurance shall be charged. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to the property reinsured by them.

358. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with securing traffic, including the cost of tariffs governing such traffic.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Classifications.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Division sheets.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Flexotype machines.
Forms, blank and printed.
Freight classifications.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rate sheets.
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Tariffs, printed.
Telegraph blanks.
Tissue (impression) paper.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper
Wringers for copying presses.

NOTE A.—The cost of dictionaries, periodicals, technical books, etc., shall be included in the appropriate superintendence accounts.

NOTE B.—The cost of stationery and printing used by traffic associations, fast freight lines, and industrial and immigration bureaus shall be included in the accounts provided for the expenses of such organizations.

359. OTHER EXPENSES.

This account shall include all expenses in connection with traffic not properly chargeable to other traffic accounts.

## IV. TRANSPORTATION—RAIL LINE.

The primary accounts included in this general account are designed to show expenses incurred for transporting persons and the property of others, including the expenses of station, train, yard, and terminal service; also the expense of transporting company material in transportation service trains.

371 SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in conducting transportation.

LIST OF OFFICERS.

(See special instructions, section 22.)

Vice president.
Assistant to the vice president.
General manager.
Assistant general manager.
General superintendent of transportation.
Superintendent of transportation.
General superintendent.
Assistant general superintendent.
Superintendent.
Division superintendent.
Assistant division superintendent.
Superintendent of car service.
Chief special agent.
Members of examining boards.
Superintendent of mail service.
Traveling train and station inspectors.
Air-brake instructor.
Superintendent of agencies.
Superintendent of transfer stations.
Trainmaster.
Assistant trainmaster.
General road foreman of locomotives.
Road foreman of locomotives.
Traveling locomotive engineer.
Traveling locomotive fireman.

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and others employed in the offices and on business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Division clerk.
Chief clerk.
Clerks.
Special agents.
Detectives.
Stenographers.
Messengers.
Cooks.
Porters.

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account; also the pay and expenses of employees attending investigations concerning the cause of or responsibility for accidents, and amounts paid detective agencies and others for work in connection with such investigations.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.
Barometers.
Books for office use.
Business car service.
Express charges.
Fees and dues in associations.
Furniture repairs and renewals.
Heating.
Lighting.
Official train service.
Periodicals and newspapers.
Power.
Provisions for business cars.
Rent of air-brake instruction cars.
Rent of offices.
Repairs of rented offices.
Telegraph service.
Telephone service.
Traveling expenses.
Water and ice.

NOTE A.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE B.—The cost of stationery purchased for transportation offices is chargeable to account No. 410, "Stationery and printing."

372. DISPATCHING TRAINS.

This account shall include the pay of chief and other train dispatchers, their clerks, copying operators, and attendants, and pay of operators on the line whose duties are confined to directing train movements; also the office, traveling, and other expenses of such employees.

NOTE.—Pay of operators who also perform station work shall be charged to account No. 373, "Station employees."

373. STATION EMPLOYEES.

This account shall include:

AGENTS, CLERKS, AND ATTENDANTS.—The pay of agents, clerks, and attendants in charge of, or engaged in, the operation of stations, wharves, and piers located on the carrier's line; also payments to such station or ticket agents in lieu of salaries.

Special payments to customs inspectors on account of opening and resealing cars under unusual conditions, and payments to produce-exchange inspectors for inspecting, measuring, and weighing grain shall be here included.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Accountants.
Assistant agents.
Assistant depot masters.
Assistant stationmasters.
Baggage agents at stations.
Baggagemen.
Car clerks.
Cashiers.
Chauffeurs.
Clerks.
Collectors.
Customs inspectors.
Depot masters.
Detectives.
Express agents.
Gatemen.
Information bureau employees.
Janitors.
Maids.
Matrons.
Messengers.
Package and parcel room employees.
Policemen.
Porters.
Relief agents.
Station agents.
Station foremen.
Station passenger agents.
Station freight agents.
Stationmasters.
Telegraph and telephone operators.
Ticket agents.
Ticket collectors.
Ticket examiners.
Train callers.
Ushers.
Watchmen.

LABOR AT STATIONS.—Station and other labor expended in handling freight, mail, baggage, and express at stations, wharves, and piers; in loading, unloading, feeding, and watering stock; in disinfecting stations, stockyards, and stock pens; in transferring, picking up, straightening, and reloading freight in the ordinary course of transportation; in miscellaneous station work, including (when done by station employees) cleaning station grounds, station platforms, walks, stockyards, and stock pens, and removing snow and ice therefrom; and in tending switch lamps not in yards and terminals.

Payments to elevator companies (when not made as division of rate) for transferring grain en route, and payments to other companies and individuals for loading and unloading commercial freight under contract or otherwise shall be included in this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Baggage storeroom employees.
Car sealers.
Checkmen.
Coal handlers.
Coopers.
Delivery men.
Electricians.
Freight callers.
Freight handlers.
Freight house foremen.
Freight loaders.
Freight unloaders.
Longshoremen.
Mail carriers.
Mail weighers.
Station cleaners.
Stationary engineers.
Stationary firemen.
Stevedores.
Stockpen laborers.
Tallymen.
Teamsters.
Truckmen.
Warehousemen.
Weighmasters.

NOTE A.—The cost of transferring freight, mail, baggage, and express on account of wrecks shall be included in account No. 415, "Clearing wrecks."

NOTE B.—This account shall not include the pay of telegraph and telephone operators provided for under accounts No. 372, "Dispatching trains," and No. 407, "Telegraph and telephone operation," or pay of employees provided for under account No. 375, "Coal and ore wharves."

374. WEIGHING, INSPECTION, AND DEMURRAGE BUREAUS.

This account shall include the cost to the carrier of its participation in joint weighing, inspection, demurrage, and car distribution bureaus and associations.

375. COAL AND ORE WHARVES.

This account shall include the cost of operating docks, and wharves, piers, and other marine, lake, or river landings, and the machinery located thereon, used in connection with the transportation of coal and ore.

LABOR AND EXPENSES.—The pay and the office, traveling, and other expenses of employees engaged in operating coal and ore wharves.

TOOLS AND SUPPLIES.—The cost of all tools and supplies used in the operation of coal and ore wharves.

ITEMS OF TOOLS AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Cylinder oil. | Lanterns. | Slice bars. |
| Fuel for stationary boilers. | Lubricating oil. | Waste. |
| Illuminating oil. | Picks. | Wicks. |
| Lantern parts. | Shovels. | |

NOTE.—The cost of switching service in connection with coal and ore wharves shall not be included in this account.

376. STATION SUPPLIES AND EXPENSES.

This account shall include:

HEATING.—The cost of fuel (including cost of unloading), water, steam, and miscellaneous supplies used for heating stations, waiting rooms, freight and passenger offices, and other station buildings.

LIGHTING.—The cost of fuel, water, gas, oil, electricity, lamp globes, lamp chimneys, wicks, lamp carbons, incandescent lamps, and miscellaneous supplies used in lighting stations, waiting rooms, freight and passenger offices, other station buildings, street approaches thereto, and passenger footbridges and subways at stations.

OTHER EXPENSES.—The cost of miscellaneous station supplies and station expenses.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

| | |
|---|---|
| Cleaning privy vaults. | Rent of automatic weighing and recording devices. |
| Express charges. | Rent of scales. |
| Feeding and shoeing horses. | Rent of station buildings (not jointly used). |
| Furniture repairs and renewals. | Reports to agents of commercial standing. |
| Garage expenses. | Sprinkling station grounds. |
| Licenses for ticket agents. | Station employees' expenses. |
| Mail transfer by others than employees. | Telegraph service. |
| Membership fees and dues in agents' associations. | Telephone service. |
| Power for station machinery. | Warehouse charges for storage of freight. |
| | Washing towels. |

ITEMS OF TOOLS AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Atlases and maps. | Check boxes. | Fire grenades. |
| Auto trucks. | Check racks. | Flags. |
| Awnings. | Checks. | Floor coverings. |
| Axes. | Clocks. | Gangplanks. |
| Badges. | Coal hods. | Gas. |
| Baggage checks. | Cold chisels. | Gasoline. |
| Barometers. | Cooperage material. | Hampers. |
| Baskets. | Copy-press stands. | Hatchets. |
| Bicycles. | Counter brushes. | Hoes. |
| Blocking. | Counter scales. | Hooks. |
| Brooms. | Cups. | Hose and couplings. |
| Brushes. | Curtains. | Ice. |
| Buckets. | Cuspidors. | Ice barrels. |
| Bulletin boards. | Desks. | Ice boxes. |
| Call bells. | Dippers. | Ice buckets. |
| Candles. | Directories. | Ice carts. |
| Car-seal presses. | Dusters. | Ice tongs. |
| Car seals. | Electric fans. | Keys. |
| Carpets. | Electric lamps. | Ladders. |
| Chains. | Electric-light supplies. | Lamp burners. |
| Chair cushions. | Feather dusters. | Lamp chimneys. |
| Chairs. | Feed for horses. | Lamp fittings. |
| Chalk. | Files, document. | Lamp globes. |
| Chamois skins. | Fire buckets. | Lamp mantles. |

Lampblack.
Lamps (not permanently attached to buildings).
Lantern fittings.
Lantern globes.
Lanterns.
Letter boxes.
Mail bags.
Marking brushes.
Marking pots.
Marline.
Matches.
Measures.
Medical boxes.
Medical supplies.
Mirrors.
Money drawers.
Nails for boxing.
Newspapers.
Oil.
Oil cans.
Packing material.
Padlocks.
Pails.
Pinch bars.
Punches for baggagemen and gatemen.
Rakes.
Reflectors.
Rolling chairs for invalids.
Safes.
Sawdust.
Saws.
Scoops.
Scales, portable.
Scrubbing brushes.
Settees.
Shovels.
Sledges.
Soap.
Spades.
Sponges.
Sprinkling cans.
Stools.
Stove blacking.
Stoves and stovepipe.
Switch lamp supplies at points where regular switching service is not maintained.
Tables.
Tacks.
Tarpaulins (not for cars).
Thermometers.
Ticket cases.
Tongs.
Tool boxes.
Torpedoes.
Towels.
Trucks.
Twine.
Urinoirms.
Washbasins.
Waste.
Water.
Water barrels.
Water bowls.
Water cans.
Water coolers.
Water pails.
Wheelbarrows.
Whisk brooms.
Wicks.
Wrenches.

377. YARDMASTERS AND YARD CLERKS.

This account shall include the pay of general yardmaster, yardmaster, assistant yardmaster, general yard foreman, and yard clerks and attendants in yards where regular switching service is maintained and in terminal switching and transfer service, including employees engaged in calling yardmen and trainmen; also pay of policemen, watchmen, and detectives in yard service. (See account No. 389, "Yard supplies and expenses.")

378. YARD CONDUCTORS AND BRAKEMEN.

This account shall include the pay of yard conductors or foremen and yard brakemen or switchmen handling cars in passenger and freight yards where regular switching service is maintained and in terminal switching and transfer service, including pay while deadheading in connection with such service. (See account No. 389, "Yard supplies and expenses.")

NOTE.—When conductors and brakemen are engaged in both train and yard service their pay shall be apportioned between the train and yard accounts on the basis of service rendered. This does not apply to train switching service performed by train crews, the entire pay of whom shall be charged to account No. 401, "Trainmen."

379. YARD SWITCH AND SIGNAL TENDERS.

This account shall include the pay of employees in yards where regular switching service is maintained, who are engaged in the operation of yard switches and signals, including interlockers used solely or principally for the government of all movements of locomotives and trains between main and yard tracks, movements of locomotives between yard tracks and enginehouses, and yard switching movements. (See account No. 389, "Yard supplies and expenses.")

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Battery men.
Interlocker oilers.
Lamp cleaners.
Lamp men.
Lamplighters.
Lever men.
Signalmen.
Switch oilers.
Switch tenders.
Tower men.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

380. YARD ENGINEMEN.

This account shall include the pay of yard engineers, and firemen while engaged in yards where regular switching service is maintained and in terminal switching and transfer service, including pay of such employees while deadheading in connection with yard service.

NOTE.—The pay of enginemen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of enginemen on train locomotives while engaged in train switching service shall be included in account No. 392, "Train enginemen." The pay of enginemen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

381. YARD MOTORMEN.

This account shall include the pay of yard motormen while engaged in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service, including pay of such employees while deadheading in connection with yard service.

NOTE.—The pay of motormen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of motormen on train locomotives while engaged in train switching service shall be included in account No. 393, "Train motormen." The pay of motormen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

382. FUEL FOR YARD LOCOMOTIVES.

This account shall include the cost, delivered on locomotive tenders, of coal, coke, oil, wood, and other fuel consumed by locomotives in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service, including a suitable proportion of the pay of fuel agents, fuel inspectors, fuel weighers, and clerks engaged in accounting for fuel at fuel stations; pay of foremen and other fuel-station employees; also a suitable proportion of the cost of tools, such as wheelbarrows, shovels, scoops, and picks used for handling fuel at such stations, and the cost of operating machinery at fuel stations.

NOTE A.—The cost of repairs and renewals of coal-chutes, buggies, pockets, air hoists, mechanical hoists, and mechanical conveyors at fuel stations shall be charged to account No. 233, "Fuel stations."

NOTE B.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

383 YARD SWITCHING POWER PRODUCED.

This account shall include the cost of the production and distribution of electric power used in operating locomotives and cars in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service.

EMPLOYEES.—The pay of employees engaged in operating electric-power stations and substations, such as engineers, firemen, electricians, dynamo men, oilers, cleaners, and coal passers.

FUEL.—The cost of coal, oil, gas, and other fuel, including the cost of labor unloading or stocking fuel.

WATER.—The cost of water used to produce steam or to operate water plants, including pumping, rent of ponds, streams, and pipe lines; also water tests, boiler compounds, and other like supplies and expenses.

OTHER SUPPLIES AND EXPENSES.—The cost of lubricants, such as oil and grease used in lubricating engines, shafting, dynamos, and pumps; cost of waste, carbon brushes, fuses, lamps, and other supplies; also the cost of heating and lighting

power plants, and other expenses not elsewhere specified in connection with operation of electric-power plants. (See special instructions, section 12.)

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

384. YARD SWITCHING POWER PURCHASED.

This account shall include the cost of electric power purchased for the propulsion of engines and cars in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service.

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

385. WATER FOR YARD LOCOMOTIVES.

This account shall include the cost of water supplied to locomotives in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service, including rent of ponds, lakes, other sources of water supply, and right of way for pipe lines; cost of water purchased, expenses of work trains while engaged in hauling water for locomotive supply, and cost of testing water; also cost of labor expended and cost of materials and supplies used in the operation of water stations and purifying plants.

The cost of operating boilers, engines, and pumps at water stations; heating and lighting water stations, breaking ice in water tanks, thawing out tank spouts and water cars, keeping fires in tanks and water cars to prevent freezing, shoveling snow into locomotive tanks; also temporary connections between water cars and locomotive tenders, compounds injected into locomotive boilers to decrease scale formation, and other expenses directly incident to the supplying of water to such locomotives, shall be included in this account.

An equitable proportion of the pay and the office, traveling, and other expenses of superintendent of water service engaged in connection with water supply for locomotives shall be included in this account.

ITEMS OF WATER STATION SUPPLIES.
(See special instructions, section 22.)

| | | |
|---|---|---|
| Axes. | Gasoline drums. | Slice bars. |
| Boiler compounds. | Hand tools. | Stove fixtures. |
| Chemicals. | Hose. | Stoves. |
| Coal. | Oil. | Waste. |
| Coal picks. | Rubber packing. | Wrenches. |
| Engine igniter batteries. | Shovels. | |
| Gasoline. | Siphons. | |

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

386. LUBRICANTS FOR YARD LOCOMOTIVES.

This account shall include the cost of valve, engine, car, and other lubricating oils, grease, compounds, and waste used for lubrication of locomotives in switching service in yards where regular switching service is maintained and in terminal switching and transfer service.

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

387. OTHER SUPPLIES FOR YARD LOCOMOTIVES.

This account shall include the cost of supplies, other than fuel, water, and lubricants, used on locomotives in switching service in yards where regular switching service is maintained and in terminal switching and transfer service, including the cost of repairs and renewals of furniture, tools, and other movable articles required for use on locomotives in yard service.

The cost of sand charged to this account shall include the cost of material and supplies used in preparing and drying the sand for use, such as the cost of fuel, wheelbarrows, shovels, and sand screens.

ITEMS OF TOOLS AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Ash hoes. | Hatchets. | Sand. |
| Ash-pan rods. | Hose (not air-brake, air-signal, or steam). | Saws. |
| Axes. | Hose, thaw-out. | Scoops. |
| Bars, buggy. | Hose reels. | Shovels. |
| Bell cords. | Ice. | Signal lamps. |
| Boxes, portable. | Jacks. | Sledges. |
| Brooms. | Jackscrews. | Slice bars. |
| Brushes. | Lanterns and parts. | Soap. |
| Buckets. | Locks for portable boxes. | Switch chains. |
| Carbide for acetylene gas. | Matches. | Switch poles. |
| Carbons for electric lights. | Oil cans. | Switch ropes. |
| Chimneys for headlights. | Oil for headlights. | Tool boxes, portable. |
| Chimneys for signal lamps. | Oil for lanterns. | Torches. |
| Chisels. | Oil for signal lamps. | Torpedoes. |
| Clinker hooks. | Oil for torches. | Waste. |
| Crowbars. | Oilers. | Water buckets. |
| Files. | Packing hooks. | Water coolers. |
| First-aid boxes. | Packing spoons. | Wicks for headlights. |
| Flags. | Picks, coal. | Wicks for lanterns. |
| Globes for lanterns. | Pinch bars. | Wicks for signal lamps. |
| Grate shakers. | Plugging bars. | Wicks for torches. |
| Hammers. | Pokers. | Wrecking frogs. |
| Handsaws. | | Wrenches. |

NOTE A.—Where the quantity of sand used on locomotives engaged in yard service is relatively small as compared with the quantity used by locomotives engaged in train service, the entire cost of such material shall be included in account No. 399, "Other supplies for train locomotives." Where the quantity used in yard service is relatively large, the entire cost shall be included in this account.

NOTE B.—The cost of other supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

388. ENGINEHOUSE EXPENSES—YARD.

This account shall include the expense of caring for and preparing locomotives for switching service in yards where regular switching service is maintained and in terminal switching and transfer service, including a proportion of such expenses as are common to train, yard switching, and work service.

ENGINEHOUSE MEN.—The pay of enginehouse employees engaged in wiping, cleaning, watching, and dispatching locomotives; keeping and preparing fires, dumping ashes, washing boilers, cleaning fire boxes, packing driving boxes and truck boxes; cleaning smokestacks, air-brake equipment, and front ends of locomotives; checking locomotive tool equipment, cleaning ash and cinder pits; operating turntables, drying sand, inspecting smokestacks and ash pans; calling enginemen; and moving locomotives around engine yards when operated by hostlers; also a proportion of the pay of enginehouse foremen and their clerks.

MISCELLANEOUS EXPENSES.—The cost of tools, supplies, and sundry expenses on account of caring for and preparing locomotives at enginehouses.

ITEMS OF MISCELLANEOUS EXPENSES.

(See special instructions, section 22.)

Boiled oil.
Compounds for cleaning and polishing.
Enginehouse cupboards.
Gas, oil, and electricity for lighting.
Heating enginehouses, including offices.
Lampblack.
Lanterns used by engidehouse men.
Lighting enginehouses, including offices.
Lubricating oil for enginehouse, ash pit, transfer table, and turntable machinery.
Lye.
Packing tools.
Paint for front ends of locomotives.
Power for operation of turntables and transfer tables.
Rent of roundhouse stalls.
Shovels.
Signal lights on transfer tables and turntables.
Waste.
Water for cinder pits.
Water for washing boilers.
Water hose.
Wheelbarrows.

NOTE A.—Enginehouse expenses of locomotives in work service shall be included in the cost of the work to which the service pertains.

NOTE B.—The pay of mechanics and laborers engaged in locomotive repair work in enginehouses shall be charged to the appropriate accounts for locomotive repairs.

## 389. YARD SUPPLIES AND EXPENSES.

This account shall include the cost of supplies (except locomotive supplies) used in yard service, yard signal and interlocker supplies, and miscellaneous yard expenses for yards where regular switching service is maintained; also office and other expenses of employees whose pay is chargeable to accounts Nos. 377, 378, and 379.

ITEMS OF YARD SUPPLIES.

(See special instructions, section 22.)

Electric-light carbons.
Electric-light globes.
Flags.
Fuel for heating.
Fuel for power.
Illuminating oil.
Lamp burners.
Lamp chimneys.
Lamp wicks.
Lantern globes.
Lantern wicks.
Lanterns.
Lubricants for machinery and switches.
Semaphore lamps.
Signal lamps.
Stoves.
Switch chains.
Switch lamps.
Switch ropes.
Waste.
Wrecking frogs.
Wrecking wedges.

ITEMS OF YARD EXPENSE.

(See special instructions, section 22.)

Electricity purchased for lighting yards and yard buildings.
Furniture repairs and renewals.
Gas purchased for lighting yards and yard buildings.
Power produced for operating switches and signals.
Power purchased for operating switches and signals.
Rent of telephones.
Rent of yard buildings (not jointly used).

## 390. OPERATING JOINT YARDS AND TERMINALS—DR.

This account shall include the carrier's proportion of the costs incurred by others in their operation of joint yards and terminals, including signals, interlockers, and other facilities at such joint yards and terminals.

NOTE A.—The purpose of this account is to show the amounts accruing against the carrier for its proportion of the cost of operating yards and terminals operated by others, and in the joint use of which the carrier participates. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

## 391. OPERATING JOINT YARDS AND TERMINALS—CR.

This account shall include amounts chargeable to others as their proportions of the costs incurred by the carrier in the operation of joint yards and terminals.

including signals, interlockers, and other facilities at such joint yards and terminals.

NOTE A.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the cost of operating yards and terminals operated by the carrier and in the joint use of which others participate. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

392. TRAIN ENGINEMEN.

This account shall include the pay of steam locomotive engineers and firemen while engaged in transportation train service or while deadheading in connection therewith and pay of such enginemen engaged in piloting trains over home lines; also the pay of employees while regularly engaged in shoveling coal forward on locomotive tenders.

NOTE.—The pay of enginemen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of enginemen on train locomotives while engaged in train switching service shall be included in this account. The pay of enginemen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

393. TRAIN MOTORMEN.

This account shall include the pay of motormen while engaged in running other than steam locomotives and cars in transportation train service or while deadheading in connection therewith; also the pay and expenses of motormen while engaged in piloting trains or cars over home lines.

NOTE.—The pay of motormen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of motormen on train locomotives while engaged in train switching service shall be included in this account. The pay of motormen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

394. FUEL FOR TRAIN LOCOMOTIVES.

This account shall include the cost, delivered on locomotive tenders, of coal, coke, oil, wood, and other fuel consumed by locomotives in transportation train service, including a suitable proportion of the pay of fuel agents, fuel inspectors, fuel weighers, and clerks engaged in accounting for fuel at fuel stations; pay of foremen and other fuel station employees; also a suitable proportion of the cost of tools, such as wheelbarrows, shovels, scoops, and picks, used for handling fuel at such stations, and the cost of operating machinery at fuel stations.

NOTE A.—The cost of repairs and renewals of coal chutes, buggies, pockets, air hoists, mechanical hoists, and mechanical conveyors shall be charged to account No. 233, "Fuel stations."

NOTE B.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

395. TRAIN POWER PRODUCED.

This account shall include the cost of producing and distributing electric power for the propulsion of electric locomotives and cars in transportation train service.

EMPLOYEES.—The pay of employees engaged in operating electric-power stations and substations, such as engineers, firemen, electricians, dynamo men, oilers, cleaners, and coal passers.

FUEL.—The cost of coal, oil, gas, and other fuel, including the cost of labor unloading or stocking fuel.

WATER.—The cost of water used to produce steam or to operate water plants, including pumping, rent of ponds, streams, and pipe lines; also water tests, boiler compounds, and other like supplies and expenses.

OTHER SUPPLIES AND EXPENSES.—The cost of lubricants, such as oil and grease, used in lubricating engines, shafting, dynamos, and pumps; cost of waste, carbon brushes, fuses, lamps, and other supplies; also cost of heating and lighting power

plants, and other expenses not elsewhere specified in connection with operation of electric-power plants. (See special instructions, section 12.)

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

396. TRAIN POWER PURCHASED.

This account shall include the cost of electric power purchased for the propulsion of locomotives and cars in transportation train service.

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

397. WATER FOR TRAIN LOCOMOTIVES.

This account shall include the cost of water supplied to locomotives in transportation train service, including rent of ponds, lakes, other sources of water supply, and right of way for pipe lines; cost of water purchased, expenses of supply trains while engaged in hauling water for locomotive supply, and cost of testing water; also cost of labor expended and cost of material and supplies used in the operation of water stations and purifying plants.

The cost of operating boilers, engines, and pumps at water stations, heating and lighting water stations, breaking ice in water tanks, thawing out tank spouts and water cars, keeping fires in tanks and water cars to prevent freezing, shoveling snow into locomotive tanks; also temporary connections between water cars and locomotive tenders, compounds injected into locomotive boilers to decrease scale formation, and other expenses directly incident to the supplying of water to such locomotives, shall be included in this account.

An equitable proportion of the pay and the office, traveling, and other expenses of superintendent of water service, engaged in connection with water supply for locomotives, shall be included in this account.

ITEMS OF WATER STATION SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Axes. | Gasoline drums. | Slice bars. |
| Boiler compounds. | Hand tools. | Stove fixtures. |
| Chemicals. | Hose. | Stoves. |
| Coal. | Oil. | Waste. |
| Coal picks. | Rubber packing. | Wrenches. |
| Engine ' niter batteries. | Shovels. | |
| Gasoline. | Siphons. | |

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

398. LUBRICANTS FOR TRAIN LOCOMOTIVES.

This account shall include the cost of valve, engine, car, and other lubricating oils, grease, compounds, and waste used for lubrication of locomotives in transportation train service.

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

399. OTHER SUPPLIES FOR TRAIN LOCOMOTIVES.

This account shall include the cost of supplies other than fuel, water, and lubricants, including the cost of repairs and renewals of furniture, tools, and other movable articles required for use on locomotives in transportation train service.

The cost of sand charged to this account shall include the cost of material and supplies used in preparing and drying the sand for use, such as the cost of fuel, wheelbarrows, shovels, and sand screens.

ITEMS OF TOOLS AND SUPPLIES.
(See special instructions, section 22.)

Ash hoes.
Ash-pan rods.
Axes.
Bars, buggy.
Bell cords.
Boxes, portable.
Brooms.
Brushes.
Buckets.
Carbide for acetylene gas.
Carbons for electric lights.
Chimneys for headlights.
Chimneys for signal lamps.
Chisels.
Clinker hooks.
Crowbars.
Files.
First-aid boxes.
Flags.
Globes for lanterns.
Grate shakers.
Hammers.
Handsaws.
Hatchets.
Hose (not air-brake, air-signal, or steam).
Hose, thaw-out.
Hose reels.
Ice.
Jacks.
Jackscrews.
Lanterns and parts.
Locks for portable boxes.
Matches.
Oil cans.
Oil for headlights.
Oil for lanterns.
Oil for signal lamps.
Oil for torches.
Oilers.
Packing, fiber.
Packing, rubber.
Packing hooks.
Packing spoons.
Picks, coal.
Pinch bars.
Plugging bars.
Pokers.
Sand.
Saws.
Scoops.
Shovels.
Signal lamps.
Sledges.
Slice bars.
Soap.
Switch chains.
Switch poles.
Switch ropes.
Tool boxes, portable.
Torches.
Torpedoes.
Waste.
Water buckets.
Water coolers.
Wicks for headlights.
Wicks for lanterns.
Wicks for signal lamps.
Wicks for torches.
Wrecking frogs.
Wrenches.

NOTE A.—Where the quantity of sand used on locomotives engaged in train service is relatively small as compared with the quantity used by locomotives engaged in yard service, the entire cost of such material shall be included in account No. 387, "Other supplies for yard locomotives." Where the quantity used in train service is relatively large, the entire cost shall be included in this account.

NOTE B.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

## 400. ENGINEHOUSE EXPENSES—TRAIN.

This account shall include the expense of caring for and preparing locomotives for transportation train service, including a proportion of such expenses as are common to train, yard switching, and work service.

ENGINEHOUSE MEN.—The pay of enginehouse employees engaged in wiping, cleaning, watching, and dispatching locomotives; preparing and keeping fires, dumping ashes, washing boilers, cleaning fire boxes, packing driving boxes and truck boxes; cleaning smokestacks, air-brake equipment, and front ends of locomotives; checking locomotive tool equipment, cleaning ash and cinder pits; operating turntables, drying sand, inspecting smokestacks and ash pans; and moving locomotives around engine yards when operated by hostlers; also a proportion of the pay of enginehouse foremen and their clerks.

MISCELLANEOUS EXPENSES.—The cost of tools and supplies and sundry expenses on account of caring for and preparing locomotives at enginehouses.

ITEMS OF MISCELLANEOUS EXPENSES.
(See special instructions, section 22.)

Boiled oil.
Compounds for cleaning and polishing.
Gas, oil, and electricity for lighting.
Heating enginehouses, including offices.
Lampblack.
Lanterns used by enginehouse men.
Lighting enginehouses, including offices.
Lubricating oil.
Lye.
Packing tools.
Paint for front ends of locomotives.
Power for operation of turntables and transfer tables.
Rent of roundhouse stalls.
Shovels.
Signal lights on transfer tables and turntables.
Waste.
Water for cinder pits.
Water for washing boilers.
Water hose.
Wheelbarrows.

NOTE A.—Enginehouse expenses of locomotives in work service shall be included in the cost of the work to which the service pertains.

NOTE B.—The pay of mechanics and laborers engaged in locomotive repair work in enginehouses shall be charged to the appropriate accounts for locomotive repairs.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

## 401. TRAINMEN.

This account shall include the pay of conductors; of train auditors, ticket collectors, and others engaged in lifting or examining authorities for transportation; and of baggagemen, brakemen, flagmen, train porters, train guards, train stenographers, maids, and other train employees while engaged in transportation train service or while deadheading in connection therewith; also the pay of trainmen while engaged in piloting trains over home lines.

NOTE.—The pay of trainmen while engaged in work-train service shall be included in the cost of the work to which the service pertains.

## 402. TRAIN SUPPLIES AND EXPENSES.

This account shall include miscellaneous expenses of transportation service trains and the cost of all supplies other than locomotive supplies.

CLEANING CARS.—The cost of cleaning and disinfecting passenger and freight cars in transportation train service, including cost of removing from freight-train cars such refuse material as sawdust, hay, and straw.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Brooms. | Disinfecting machines. | Soap. |
| Brushes. | Fuel for heating water. | Sponges. |
| Cleaning compounds. | Hose and fixtures. | Water. |
| Compressed air. | Labor of employees. | |
| Disinfectants. | Polishing compounds. | |

HEATING CARS.—The cost of heating cars in transportation train service, including cost of operating steam-heating plants for car heating at stations and yards.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

| | |
|---|---|
| Connections between steam heating lines and cars. | Labor of employees. |
| Fuel. | Removal of ashes from car stoves. |
| | Stoves temporarily in freight cars. |

LIGHTING CARS.—The cost of lighting cars in transportation train service, including the cost of filling and cleaning lamps and of operating plants for supplying gas or electricity for lighting purposes.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Battery renewals. | Gas mantles. | Lamp carbons. |
| Candles. | Globes. | Oil. |
| Chimneys. | Hose and connections. | Shades. |
| Electricity. | Incandescent lamp bulbs. | Wicks. |
| Gas. | Labor of employees. | |

NOTE.—Repairs of gas lighting and electric lighting plants shall be included in the proper maintenance accounts. Repairs and renewals of electric lighting equipment of cars, except supplies as above provided, shall be included in the appropriate car-repair account.

LUBRICATING CARS.—The cost of lubricating cars in transportation train service, including cost of inspecting, repacking, and oiling car journal boxes and air brake equipment.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Cotton waste. | Oil, grease, and other lubricants. | Packing irons. |
| Grease buckets. | Packing buckets. | Packing, miscellaneous. |
| Labor of employees. | Packing hooks. | Wool waste. |
| Oil cans. | | |

ICING AND WATERING CARS.—The cost of icing and watering cars in transportation train service, including icing cars for refrigeration purposes. Credits shall be made to this account for refrigeration charges collected from other companies and individuals.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Buckets. | Ice tools. | Salt. |
| Hose and fixtures. | Labor of employees. | Water. |
| Ice. | Ladders. | |

DETOURING TRAINS.—The compensation for temporary use of tracks of other carriers, including the cost of pilot service, on account of wrecks, washouts, landslides, snow blockades, and other defects of the tracks, bridges, or tunnels on the carrier's line.

TRAIN SUPPLIES.—The cost of supplies furnished for use on cars in transportation train service.

ITEMS OF TRAIN SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Axes. | Hammers. | Shovels. |
| Badges. | Hatchets. | Signal boxes. |
| Beds. | Jacks. | Signal lamps (rear). |
| Bell cords. | Lamp-boards. | Sledges. |
| Boxes for trainmen. | Lamp sticks. | Soap. |
| Brooms. | Lantern globes. | Switch chains. |
| Brushes. | Lantern parts. | Switch ropes. |
| Chains. | Lanterns. | Toilet paper. |
| Chairs for cabooses (not permanently attached). | Matches. | Torpedoes. |
| | Medical boxes. | Towels. |
| Cold chisels. | Oil for lanterns. | Train tool boxes. |
| Combs. | Order hoops. | Uniform trimmings. |
| Conductors' punches. | Padlocks. | Uniforms. |
| Cuspidors. | Pails. | Ventilator sticks. |
| Drinking cups and glasses. | Punches. | Waste. |
| Fire buckets. | Sawdust. | Water buckets. |
| Flags. | Saws. | Wrecking frogs. |
| Fuses. | Scoops. | Wrenches. |

OTHER EXPENSES.—The cost of miscellaneous supplies required to equip trains for transportation service and miscellaneous expenses incident to operation of such trains.

ITEMS OF EXPENSE ON ACCOUNT OF EMPLOYEES.

(See special instructions, section 22.)

Apparatus for testing the sight and hearing of enginemen and trainmen.
Employees' reading and bunk room expense, including pay of attendants and supplies furnished.
Laundry work.
Physicians' fees for examination of train employees.
Wages paid to superintendents and secretaries of reading rooms.

ITEMS OF EXPENSE ON ACCOUNT OF TRANSPORTATION.

(See special instructions, section 22.)

Bedding for stock cars.
Boarding and slatting box and stock cars for carrying coal, coke, and other freight
Boards for flooring fruit cars.
Chains for securing loads.
Cleaning, trimming, and filling trainmen's lanterns and rear signal lamps.
Coupling and uncoupling cars at terminals.
Disinfecting cars.
Dunnage used in loading cars or fitting cars for freight shipments.
Feed for live stock in snow-bound or otherwise delayed trains.
Flowers and plants for cars.
Laundry for revenue service cars other than for dining and buffet service and sleeping car service.
Occasional turning of engines on Y of other carriers.
Oil and other supplies for locomotives hauled as freight.
Periodicals for use of passengers on trains.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

Planking cars for billet shipments and other material.
Provisions, supplies, or board for passengers in delayed trains.
Removing advertisements from cars.
Rent of fare registers in cars.
Safety chains for use between twin and triple cars.
Supplies for parlor and chair cars.
Supplies furnished cars for the purpose of protection against accidents and fires.
Temporary grain doors.
Temporary lining of cars for freight shipments and stoves and heaters to prevent freezing.
Temporary openings in cars for freight shipments.
Temporary racking of cars for handling sugar-cane, corn, bark, or cordwood.
Transferring passengers, express matter, baggage, mail, and freight on account of defective tracks, bridges, or tunnels.

NOTE.—The expenses of operating sleeping, dining, and buffet car features of train service shall be included in the account No. 403, "Operating sleeping cars," or in account No. 441, "Dining and buffet service," as may be appropriate.

## 403. OPERATING SLEEPING CARS.

This account shall include the cost of operating sleeping car service on trains.

SUPERINTENDENCE.—The pay of officers directly in charge of operating sleeping car service; the pay of their clerks and office attendants; also the office, traveling, and other expenses of such officers and employees.

STATION EMPLOYEES.—The pay and expenses of local agents, ticket agents, cashiers, clerks, and attendants; also the office and other expenses of such employees.

STATION EXPENSES.—The expenses of fuel, water, steam, and supplies used in heating station offices; gas, oil, electric current, and other supplies for lighting; repairs and renewals of station furniture, and all other station expenses connected with sleeping car service when separable from the station expenses chargeable to account No. 376, "Station supplies and expenses."

CONDUCTORS.—The pay of conductors employed on sleeping cars.

PORTERS AND MAIDS.—The pay of porters and maids employed on sleeping cars.

CAR SUPPLIES.—The cost of miscellaneous supplies used on sleeping cars, such as combs, brushes, brooms, and toilet paper; also uniforms, caps, and service stripes for employees.

LAUNDRY.—Expenses for laundry work, such as laundering sheets, pillow-cases, towels, blankets, etc.

OTHER EXPENSES.—The cost of flowers and plants, heating cars, cleaning the interior of cars, and of supplies used in interior cleaning, rent and cost of supplies for rooms furnished for sleeping car service employees, and such other expenses in connection with the operation of sleeping cars as are not provided for elsewhere.

NOTE.—When officers have immediate supervision over sleeping car service and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

## 404. SIGNAL AND INTERLOCKER OPERATION.

This account shall include the cost of operating signals and interlockers other than those solely or principally used for governing all movements of locomotives and trains between main and yard tracks, movements of locomotives between yard tracks and enginehouses, and yard switching movements.

LABOR.—The wages of employees engaged in operating signals and interlockers or power producing plants in connection therewith, such as switch tenders, signalmen other than telegraph operators, lever men, switch and signal oilers, battery men, lamp men, lamp cleaners, and lamplighters; gatemen at crossings of other railroads, engineers and others operating plants furnishing compressed air for signals and interlockers; engineers, electricians, and others operating plants furnishing electric power for signals and interlockers.

SUPPLIES.—The cost of supplies used in operating signals and interlockers or in signal offices, such as gasoline, vitriol, battery zincs, battery coppers, lubricating oils, fuel for heating, fuel for power purposes, produced and purchased power used in operating switches and signals, furniture repairs and renewals, water, and light.

NOTE.—The cost of operating signals and interlockers solely or principally used for governing the movement of yard locomotives and trains shall be included in the appropriate yard expense accounts.

405. CROSSING PROTECTION.

This account shall include the pay of street and highway crossing gatekeepers and flagmen, the cost of supplies used by them, the cost of lights at street and highway crossings not a part of the lighting outfit at stations or in yards, and the cost of compressed air for operating gates.

406. DRAWBRIDGE OPERATION.

This account shall include the cost of operating drawbridges.

LABOR.—The wages of employees engaged in operating drawbridges, such as bridge engineers, tenders, and watchmen.

SUPPLIES.—The cost of produced and purchased power and of supplies, such as fuel, oil, lanterns, water, waste, boats, stoves, chairs, brooms, and pails used in drawbridge operation.

407. TELEGRAPH AND TELEPHONE OPERATION.

This account shall include the cost of telegraph and telephone operation not provided for elsewhere.

SUPERINTENDENCE—TELEGRAPH.—The pay of superintendents of telegraph, telegraph censors, their clerks, and attendants.

TELEGRAPH OPERATORS AND MESSENGERS.—The pay of telegraph operators, block inspectors, and messengers in telegraph and relay offices other than those employed in dispatching trains and those located in general offices or at stations.

OTHER TELEGRAPH EXPENSES.—Office, traveling, and incidental expenses, including office rent, of employees whose pay is chargeable to this account; rent of telegraph conduits, lines, and poles; cost of battery renewals and supplies, bicycles for messengers, and electric current for telegraph purposes; also excess payments to telegraph companies when in connection with telegraph service and not provided for elsewhere.

NOTE A.—The pay, rent, other office expenses, and traveling expenses of superintendents of telegraph, their assistants, clerks, and attendants, when engaged both in maintaining and operating telegraph lines, shall be apportioned equally between this account and account No. 247, "Telegraph and telephone lines."

SUPERINTENDENCE—TELEPHONE.—The pay of superintendents of telephone, their clerks, and attendants.

TELEPHONE OPERATORS AND MESSENGERS.—The pay of telephone operators and messengers in telephone offices other than those employed in dispatching trains and those located in general offices or at stations.

OTHER TELEPHONE EXPENSES.—Office, traveling, and incidental expenses, including office rent, of employees whose pay is chargeable to this account; rent of telephone conduits, lines, and poles; cost of battery renewals and supplies, bicycles for messengers, and electric current for telephone purposes; also excess payments to telephone companies when in connection with telephone service and not provided for elsewhere.

NOTE B.—The pay, rent, other office expenses, and traveling expenses of superintendents of telephone, their assistants, clerks, and attendants, when engaged both in maintaining and operating telephone lines, shall be apportioned equally between this account and account No. 247, "Telegraph and telephone lines."

## 408. OPERATING FLOATING EQUIPMENT.

This account shall include the cost of operating floating equipment in water transfer service (ferriage, lighterage, and floatage). (See general instructions, section 1.)

SUPERINTENDENCE.—The pay of vice presidents and other officers directly in charge of or engaged in the operation of boats; the pay of their assistants, clerks, and attendants; also the office, traveling, and other expenses of such officers and their employees.

WAGES OF CREWS.—The pay of captains, pilots, chief officers, mates, sailors, wireless telegraph operators, and other employees of the deck department; engineers, assistant engineers, electricians, oilers, firemen, coal passers, and all other employees of the engineer's department; and pursers, porters, and all other employees in the steward's department, except when engaged in dining and buffet service.

FUEL.—The cost, on board boats (including the cost of trimming) of coal, oil, wood, and other fuel used for generating power, heat, or light.

LUBRICATION.—The cost of oil, grease, tallow, graphite, and other material furnished for lubricating purposes.

OTHER SUPPLIES AND DEPARTMENTAL EXPENSES.—The cost of supplies furnished to deck department; the incidental expenses of deck department employees; supplies other than fuel and lubricants, furnished the engineer's department; water furnished to boats; incidental expenses of engineer's department employees; supplies (other than dining and buffet supplies) furnished to the steward's department; laundry for boats; and incidental expenses of steward's department employees.

ITEMS OF SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Axes. | Hose. | Ropes. |
| Brooms. | Ice. | Shovels. |
| Brushes. | Lamps. | Soap. |
| Commissarial supplies. | Laundry. | Tallow. |
| Flags. | Lines. | Tools, miscellaneous. |
| Gas. | Mops. | Trucks. |
| Globes. | Oil. | Waste. |
| Grease. | Pails. | Water. |
| Handspikes. | Planks. | Wicks. |
| Hatchets. | Provisions. | Wrenches. |

OTHER EXPENSES.—Expenses incident to the operation of floating equipment not otherwise provided for in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

| | |
|---|---|
| Customhouse fees. | Raising sunken boats. |
| License fees. | Transferring passengers in case of accidents. |
| Pumping out boats laid up. | Wharfage. |

ELEVATION AND LONGSHORE LABOR.—The cost of shore labor in connection with loading and unloading lighterage freight at wharves and piers, such as labor of bridgemen at transfer bridges and of watchmen, longshoremen, stevedores, and other wharf men.

ELEVATION AND SHORE EXPENSES.—Shore expenses in connection with loading and unloading lighterage freight, such as the cost of steam and electricity for power, heating, and lighting; power and supplies used for transfer or float bridges; supplies used in connection with operating wharves and piers and not chargeable to account No. 376, "Station supplies and expenses."

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

ITEMS OF SUPPLIES.

(See special instructions, section 22.)

Brooms.
Carbons.
Chalk.
Coal hods.
Coal shovels.
Cold chisels.
Crowbars.
Gas.
Hammers.
Hatchets.
Ice.
Ice tongs.
Incandescent lights.
Lamps, reflector.
Lanterns.
Marline.
Matches.
Oil.
Oil cans.
Pails.
Pinch bars.
Ropes.
Salt.
Scoops.
Shovels.
Soap.
Tacks.
Tallow.
Torches.
Towels.
Twine.
Waste.
Water.
Water coolers.
Wheelbarrows.

NOTE A.—When the compensation for the use of floating equipment used in water transfer service includes rent, maintenance, and operation, the portion covering rent shall be charged to income account No. 539, "Rent for floating equipment;" the portion covering maintenance shall be charged to the appropriate account for maintenance of equipment, and the portion covering operation shall be included in this account.

NOTE B.—The cost of labor expended in transferring freight between cars and boats shall be distributed in such manner as to include in account No. 373, "Station employees," the expense of handling between the cars and the string piece of the wharf or rail of the boat, and to include in this account the expense of handling upon the boats.

## 409. EXPRESS SERVICE.

This account shall include the cost of operating express service.

DRIVERS AND MESSENGERS.—Pay of express messengers, drivers, and helpers, and cost of their uniforms, uniform trimmings, and badges; and pay of baggage-masters handling express.

OTHER EXPENSES.—Pay of stablemen in express service, rent of stables, and expense of feeding and shoeing horses.

## 410. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with rail line transportation, including operation of floating equipment.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Baggage checks, printed.
Baggage scrip.
Baggage storage checks.
Bills of lading.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Conductors' hat checks.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cross-section books.
Cross-section paper.
Cyclostyles.
Dating stamps and ribbons.
Delivery tickets.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Fuel tickets.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mileage books.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Parchment paper.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.

Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping orders.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Ticket stamps.
Tickets.
Time-tables (employees).
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Waybills.
Wrapping paper.
Wringers for copying presses.

NOTE.—The cost of dictionaries, periodicals, technical books, etc., shall be included in appropriate superintendence accounts, and city directories and books of reference used by station agents shall be charged to account No. 376, "Station supplies and expenses."

## 411. OTHER EXPENSES.

This account shall include all expenses in connection with rail line transportation not properly chargeable to other transportation accounts.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Amounts paid for switching empty cars otherwise than in connection with loaded movements or with the repairs to the equipment.
Amounts paid on account of bills of lading issued on fraudulent receipts.
Amounts paid to suspended transportation department employees covering periods of suspension.
Compensation for property loss incident to failure to stop at station to pick up passengers.
Demurrage accruing on a foreign line by reason of error of carrier's agent.
Extra drayage due to agent's error in routing interline shipment.
Fees paid arbitrators in wage disputes of transportation department employees.
Loss of station funds by burglary, when not covered by insurance.
Loss of train collections in holdup.
Overcharges paid foreign lines on account of error of the carrier's agent in routing and billing.
Pay and expenses of transportation department employees attending conferences with officers in connection with wage disputes.
Payments for switching on account of cars not passing inspection at junction points.
Penalties imposed under reciprocal demurrage laws for failure to furnish cars.
"Penalty switching" payments on account of improper delivery of cars to other carriers.

## 412. OPERATING JOINT TRACKS AND FACILITIES—DR.

This account shall include the carrier's proportion of the transportation expenses incurred by others in the operation of joint tracks, interlockers, and other facilities which are not provided for in account No. 390, "Operating joint yards and terminals—Dr."

NOTE A.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the cost of operating tracks and facilities (other than at joint yards and terminals) operated by others and in the joint use of which the carrier participates. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

## 413. OPERATING JOINT TRACKS AND FACILITIES—CR.

This account shall include amounts chargeable to others as their proportions of transportation expenses incurred by the carrier in the operation of joint tracks, interlockers, and other facilities which are not provided for in account No. 391, "Operating joint yards and terminals—Cr."

NOTE A.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the cost of operating tracks and facilities (other than at joint yards and terminals) operated by the carrier and in the joint use of which others participate. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

414. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Transportation—Rail Line; also premiums on fidelity bonds of employees whose pay is chargeable to Transportation—Rail Line. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to property reinsured by them.

415. CLEARING WRECKS.

This account shall include the cost of clearing wrecks other than wrecks of work trains.

LABOR.—The wages of employees while engaged in connection with wrecking service, loading, and transferring contents of wrecked cars, building temporary tracks around wrecks, and removing such tracks.

TRAIN SERVICE.—The cost of train service in connection with replacing wrecked equipment upon the tracks and transporting such equipment to shops for repairs, including amounts paid to other companies for service of locomotives, derricks, and other equipment and for wages of crews in wrecking service.

OTHER SUPPLIES AND EXPENSES.—Payments for reloading or transferring freight, express, baggage, and mail; transferring passengers, and cost of provisions or board for men clearing up or watching at wrecks.

NOTE A.—Expenses of clearing wrecks of work trains shall be included in the cost of the work in connection with which the wrecked train was engaged.

NOTE B.—The cost of restoring roadbed and tracks to original condition after wrecks and the cost of repairing equipment damaged or destroyed by wrecks shall be charged to the appropriate accounts for maintenance of way and structures and maintenance of equipment.

NOTE C.—That proportion of payments to other companies for use of locomotives, derricks, and other equipment in wrecking service which represents rent shall be included in the income accounts.

416. DAMAGE TO PROPERTY.

This account shall include payments and expenses on account of damages to the property of others, whether by fire, collision, flood, or other cause, with the exception of payments and expenses on account of damage to property intrusted to the carrier for transportation, and for damage to stock on right of way. It shall include also fines or compensation paid for interference with the business of others, as by detention of vessels at drawbridges, or by blocking streets.

This account shall include also the pay, office rent, and office, traveling, and other expenses of employees and others engaged as claim adjusters or as witnesses in lawsuits in connection with damage to property cases, or engaged in detection of thieves; notarial fees paid in connection with such cases; and payments for or repairs of damage to equipment of other carriers, or to property contained therein, such carriers having trackage rights upon or grade crossings over the carrier's tracks.

NOTE A.—Damage to live stock on right of way, and damage to freight and baggage intrusted for transportation, are provided for under accounts No. 417, "Damage to live stock on right of way"; No. 418, "Loss and damage—Freight"; and No. 419, "Loss and damage—Baggage."

NOTE B.—Expenses incident to suits growing out of damage to property claims, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE C.—The pay, office rent, and the traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not accurately assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged. This provision does not apply to the pay and expenses of general officers or general office employees whose pay is includible in general account VII, General.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

417. DAMAGE TO LIVE STOCK ON RIGHT OF WAY.

This account shall include payments on account of cattle and other live stock killed or injured while crossing or trespassing on the right of way, including cost of removing and burying the same.

There shall be included in this account also the pay and the traveling, office, and other expenses of employees and others engaged as live-stock claim adjusters or engaged as witnesses in lawsuits in connection with damage to live stock on right of way; also notarial fees in connection with claims for damage to live stock on right of way.

NOTE A.—Expenses incident to suits growing out of live-stock claims, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—The pay, office rent, and the traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not accurately assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged. This provision does not apply to the pay and expenses of general officers or general office employees whose pay is includible in general account VII, General.

418. LOSS AND DAMAGE—*FREIGHT*.

This account shall include payments and expenses on account of loss, destruction, damage, or delays to revenue freight shipments, including locomotives and cars transported as freight, express matter, milk shipments, and live stock, and expenses incurred on account of such payments; also expenses on account of loss, destruction, or damage to shipments of company material.

This account shall also include the cost of repacking and boxing damaged freight shipments; notarial fees in connection with freight claims; freight charges paid other carriers on lost, destroyed, or damaged shipments; pay, traveling, office, and other expenses of employees or others engaged as freight-claim adjusters, as witnesses in lawsuits in connection with freight-claim cases, in selling damaged and unclaimed shipments, or in detecting thieves; rent of warehouses used for storage of damaged and astray freight shipments, payments for storage of such shipments in public warehouses, and interest and penalties assessed for nonpayment of freight claims.

Amounts received from the sale of astray and damaged freight shall be credited to this account.

NOTE A.—Expenses incident to suits growing out of loss and damage (freight) claims, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—The pay, office rent, and traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not accurately assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged. This provision does not apply to the pay and expenses of general officers or general office employees whose pay is includible in general account VII, General.

419. LOSS AND DAMAGE—BAGGAGE.

This account shall include payments for loss, destruction, damage, or delays to baggage and other personal property carried as baggage, and damage to personal apparel; also expenses on account of such loss or damage.

This account shall also include the cost of repacking and boxing damaged baggage; notarial fees in connection with baggage claims; baggage claim payments made to other carriers on lost, destroyed, damaged, or delayed shipments; pay, traveling, office, and other expenses of employees or others engaged as baggage claim adjusters, as witnesses in lawsuits in connection with baggage claim cases, in selling damaged and unclaimed baggage, or in detecting thieves; rent of warehouses used exclusively for storage of damaged and unclaimed baggage, payments for storage of such shipments in public warehouses, and interest and penalties assessed for nonpayment of claims.

Amounts received from the sale of astray and damaged baggage shall b
ited to this account.

NOTE A.—Expenses incident to suits growing out of loss and damage (baggage) clai
otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—The pay, office rent, and traveling, office, and other expenses of claim adjuste
clerks, and others engaged in claim matters when not accurately assignable to a distinct class
shall be apportioned equally among the several classes of claims over which they have juri
or in connection with which they are engaged. This provision does not apply to the pay and e
of general officers or general office employees whose pay is includible in general account VII,

NOTE C.—When a payment on account of injuries to passengers includes allowance for
to personal apparel the damage allowance shall be included in this account when separable; o
in the appropriate personal injury account.

420. INJURIES TO PERSONS.

This account shall include expenses on account of injuries to persons
occur directly in connection with transportation service, including dama
ejectment of passengers.

Services of employees and others called in consultation in relation to
adjustments; pay and expenses of employees while engaged as witnesses
quests and lawsuits, and a suitable proportion of donations made to hos
shall be included in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Artificial limbs.
Carriage fees.
Claim adjusters' and clerks' services.
Claim adjusters' office expenses.
Compensation for injuries or death.
Final judgments, including plaintiffs' court costs.
Funeral expenses.
Hospital attendance.
Medical and surgical services.
Medical and surgical supplies.
Notarial fees.
Nursing.
Railway transportation.
Undertakers' services.
Undertakers' supplies.
Witnesses' fees and expenses at inque
lawsuits.

NOTE A.—Expenses incident to personal injury suits, not otherwise provided for, shal
cluded in account No. 454, "Law expenses."

NOTE B.—Amounts donated by a carrier to hospitals shall be distributed, 25 per cent to
No. 274, "Injuries to persons"; 25 per cent to account No. 332, "Injuries to persons"; and 50
to account No. 420, "Injuries to persons."

NOTE C.—The pay, office rent, and traveling, office, and other expenses of claim ad
claim clerks, and others engaged in claim matters, when not accurately assignable to a distin
of claims, shall be apportioned equally among the several classes of claims over which th
jurisdiction or in connection with which they are engaged. This provision does not appl
pay and expenses of general officers or general office employees whose pay is includible in
account VII, General.

NOTE D.—When a payment on account of injuries to persons includes allowance for da
personal apparel, the damage allowance shall be included in account No. 419, "Loss and da
Baggage," when separable; otherwise the entire payment shall be included in this account.

## V. TRANSPORTATION—WATER LINE.

The primary accounts included in this general account are designed to
the expenses incurred in transporting persons and property by water lines

When the compensation for the use of floating equipment used in wat
operations includes rent, maintenance, and operation, the portion coverin
shall be charged to income account No. 539, "Rent for floating equipm
the portion covering maintenance shall be charged to the appropriate ac
for maintenance of equipment, and the portion covering operation sh
distributed to the primary accounts in this account. (See general instru
section 1.)

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTION

## 431. OPERATION OF VESSELS.

This account shall include the cost of operating vessels in water-line service. It shall include:

SUPERINTENDENCE.—The pay of vice presidents and other officers directly in charge of or engaged in the operation of vessels; the pay of their assistants, clerks, and attendants; also the office, traveling, and other expenses of such officers and their employees.

WAGES OF CREWS.—The pay of captains, pilots, chief officers, mates, sailors, wireless telegraph operators, and other employees of the deck department; engineers, assistant engineers, electricians, oilers, firemen, coal passers, and all other employees of the engineer's department; and pursers, stewards, stewardesses, cooks, pantrymen, waiters, porters, and all other employees in the steward's department.

FUEL.—The cost, on board vessels (including the cost of trimming), of coal, oil, wood, and other fuel used for generating power, heat, or light.

LUBRICATION.—The cost of oil, grease, tallow, graphite, and other material furnished for lubricating purposes.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of vessels. (For stationery and printing items, see expense account No. 410.)

FOOD SUPPLIES.—The cost of all food supplies furnished to the steward's department.

BAR SUPPLIES.—The cost of all wines, liquors, beers, ales, mineral waters, cigars, cigarettes, tobacco, and other bar supplies.

OTHER SUPPLIES AND DEPARTMENTAL EXPENSES.—The cost of supplies furnished to deck department; the incidental expenses of deck department employees; supplies, other than fuel and lubricants, furnished the engineer's department; water furnished to ships; and incidental expenses of engineer's department employees; supplies (other than food and bar) furnished to the steward's department; laundry for ships; and incidental expenses of steward's department employees.

LAY-UP EXPENSES.—The pay of crews and all other transportation expenses incurred on account of floating equipment when laid up and not undergoing repairs or betterment.

OTHER EXPENSES.—Expenses incident to the operation of vessels not otherwise provided for in this account.

NOTE A.—When officers enumerated above have supervision over other departments also, their pay, office and other expenses, as also the pay, office and other expenses of their assistants, clerks, and attendants, shall be equitably apportioned among the departments over which they have jurisdiction.

NOTE B.—The rent for offices and other structures of minor importance used in the operation of vessels shall be included in this account. The rent for such property of major importance, which is ordinarily leased for a period of years, shall be included in Income.

## 432. OPERATION OF TERMINALS.

This account shall include the expenses of the operation of terminals devoted to water-line operations. It shall include:

SUPERINTENDENCE.—The pay of vice presidents and other officers in charge of or engaged in the operation of terminals; the pay of their assistants, clerks, and attendants; also the office, traveling, and other expenses of such officers and their employees; the salaries of agents, clerks, and attendants; the pay of port or station agents and their employees; the pay of wharf employees (except stevedores and other laborers provided for in the subheading "Stevedore and

wharf labor"); agency and office expenses; expenses of telegraph and telephone service; postage, heat, light, power, water, ice, furniture, and other supplies (except stationery and printing); and incidental office and traveling expenses of port or station agents, their clerks, and attendants.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of terminals. (For stationery and printing items see expense account No. 410.)

STEVEDORE AND WHARF LABOR.—The pay of stevedores, foremen, and longshoremen when engaged directly in loading and unloading vessels; payments for labor in connection with handling, trimming, and stowing cargoes in vessels, including payments to companies and individuals engaged to handle cargoes by contract; and the pay of laborers on wharves when engaged in piling, tiering, and handling freight, and in unloading and loading baggage.

TUGS AND LIGHTERS—OPERATION.—Expenses in connection with the operation of tugs, lighters, and other floating equipment employed in terminal operations, including superintendence, wages, fuel, water, lubricants, food supplies, wharfage, and laborers engaged in handling lightered cargoes (except directly to or from ships).

SWITCHING, LIGHTERAGE, AND OTHER TRANSFERS.—Payments made to other companies or individuals for lightering, switching, or transferring freight; teaming; operating team transfers owned by the carrier; and other expenses in connection with the transfer of freight not provided for in the foregoing paragraph or in revenue account No. 121, "Freight."

LIGHT, HEAT, POWER, AND WATER.—The expenses of light, heat, power, and water used in the operation of terminals (except in agents' or superintendents' offices); both when purchased and when produced by the carrier.

WHARF SUPPLIES AND EXPENSES.—The cost of supplies used by and expenses of wharf employees, such as meals furnished, advertising for wharf employees, cost or rent of equipment for watchmen, firemen, and police; uniforms for wharf employees; supplies for coopering, marking, and tagging freight; car standards, binders, etc.; and expenses not chargeable as repair items incident to keeping wharves in proper condition.

OTHER EXPENSES.—Expenses incident to the operation of terminals not otherwise provided for in this account, including harbor master's fees, quarantine expenses, customhouse and other port charges.

NOTE A.—When officers enumerated above have supervision over other departments also, their pay, office and other expenses, as also the pay, office and other expenses of their assistants, clerks, and attendants, shall be equitably apportioned among the departments over which they have jurisdiction.

NOTE B.—The rent for offices and other structures of minor importance used in the operation of terminals shall be included in this account. The rent for such property of major importance, which is ordinarily leased for a period of years, shall be included in Income.

433. INCIDENTAL.

This account shall include incidental transportation expenses in connection with water-line operations. It shall include:

LOSS AND DAMAGE—FREIGHT.—Payments and expenses for loss, damage, delays, or destruction of freight (including company material); uncollectible freight charges paid other carriers on misrouted, lost, damaged, or destroyed shipments; cost of repacking and boxing damaged merchandise; pay and expenses of employees and others engaged as adjusters and in detecting thieves; and the pay and expenses of employees and others engaged as witnesses in lawsuits in connection with loss and damage cases. The net amount received from the sale of astray and damaged freight shall be credited to this account.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

LOSS AND DAMAGE—BAGGAGE.—Payments and expenses for loss, damage, delays, or destruction of baggage or other personal property carried as baggage, and damage to personal apparel; the cost of repacking and boxing damaged baggage; and the pay and expenses of employees or others while engaged as adjusters and witnesses in lawsuits in cases involving loss or damage to baggage. The net amount received from the sale of astray and damaged baggage shall be credited to this account.

DAMAGE TO PROPERTY.—Payments and expenses on account of damages to or destruction of property of others, whether by fire, collision, or other cause, with the exception of payments and expenses on account of damage to property intrusted to the carrier for transportation; and pay and expenses of employees and others while engaged as adjusters and as witnesses in lawsuits arising out of damage to property.

INJURIES TO PERSONS.—Compensation and expenses incident to injuries to persons occurring directly in connection with the transportation operations of water lines; a proportion of the pay and expenses of physicians and surgeons; of claim adjusters and clerks; expenses of nurses and hospital attendants; medical and surgical supplies; artificial limbs; funeral expenses; railway, boat, and carriage fares for conveying injured persons and attendants; donations or contributions to hospitals in which employees are cared for; pay and expenses of employees and others while attending coroners' inquests, while engaged as witnesses in lawsuits in connection with personal injury cases, or when called in consultation in relation to personal injury claims.

INSURANCE.—Premiums paid, except reinsurance premiums, for insuring the carrier against loss through injuries to persons, or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Transportation—Water Line; also premiums on fidelity bonds of employees whose pay is chargeable to that account. (See special instructions, section 18.)

NOTE A.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to property reinsured by them.

NOTE B.—Expenses not otherwise provided for in connection with the conduct of loss, damage, and personal injury suits shall be charged to account No. 454, "Law expenses," but the amount of final judgments, including plaintiff's court costs, shall be included in this account.

NOTE C.—The pay, office rent, and traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not directly assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged.

## VI. MISCELLANEOUS OPERATIONS

The primary accounts included in this general account are designed to show the expenses incurred in miscellaneous operations. (See general instructions, section 4.)

### 441. DINING AND BUFFET SERVICE.

This account shall include the cost of operating dining and buffet service on trains and transfer boats. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of operating dining and buffet service; the pay of their assistants, clerks, and office attendants; also the office, traveling, and other expenses of such officers and their employees.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

COMMISSARIAL EMPLOYEES.—The pay of storekeepers, assistant storekeepers, clerks, porters, and other employees in commissarial supply depots and storehouses.

STEWARDS.—The pay of stewards or conductors employed on dining and buffet cars and transfer boats.

COOKS AND WAITERS.—The pay of cooks, waiters, and assistants on dining and buffet cars and transfer boats

FUEL AND SUPPLIES.—The cost of fuel for cooking purposes; of provisions, such as meats, groceries, vegetables, fish, table waters, ice, etc.; bar supplies, such as wines, liquors, beers, ales, etc.; cost of licenses; and cost of cigars, cigarettes, and tobacco.

LAUNDRY.—Expenses for laundry work, such as laundering tablecloths, napkins, aprons, etc.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with dining and buffet service.

OTHER EXPENSES.—The cost of flowers and plants; cleaning the interior of cars; rent and cost of supplies for rooms furnished for dining and buffet service employees; and such other expenses in connection with the operation of dining and buffet service as are not provided for elsewhere.

NOTE.—When officers have immediate supervision over dining and buffet service and other operations their pay, office and other expenses, as also the pay, office and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

442. HOTELS AND RESTAURANTS.

This account shall include the cost of operating hotels, restaurants, and lunch counters when the cost of the operated property is includible in the road and equipment accounts. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of operating hotels, restaurants, and lunch counters; pay of their clerks and office attendants; also the office, traveling, and other expenses of such officers.

EMPLOYEES.—The pay of stewards, hotel keepers, storekeepers, checkers, linen clerks, butchers, chefs, cooks, kitchen help, maids, porters, elevator men, call boys, hat and cloak attendants, waiters, waitresses, laundresses, engineers, firemen, and other employees engaged in operating hotels, restaurants, and lunch counters.

FUEL AND SUPPLIES.—The cost of fuel for cooking and heating purposes; provisions, such as meats, groceries, vegetables, fish, table waters, ice, etc.; bar supplies, such as wines, liquors, beers, ales, etc.; the cost of liquor licenses; the cost of tobacco, cigars, cigarettes, etc.; and miscellaneous supplies for operating the service.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of hotels and restaurants.

OTHER EXPENSES.—The cost of lighting, and other items of expense not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over hotels, restaurants, and lunch counters and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

443. GRAIN ELEVATORS.

This account shall include the cost of operating grain elevators other than small elevators which are classed as station facilities. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of grain-elevator service; the pay of their assistants, clerks, and office attendants; also the office, traveling, and other expenses of such officers and their employees.

**NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.**

EMPLOYEES.—The pay of engineers, firemen, foremen, machine men, oilers, millwrights, carpenters, trimmers, weighers, spout men, sweepers, laborers, watchmen, and all other employees engaged in operating grain elevators.

FUEL AND SUPPLIES.—The cost of fuel for power, heating, and lighting plants; power for heating, lighting, and operating machinery; and water, ice, oil, waste, and other supplies for operating such property.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of grain elevators.

OTHER EXPENSES.—The cost of grain used to make up shortage in elevators; stationery and printing; rent for and repairs of rented offices; and other operating expenses not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over grain elevators and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

444. STOCKYARDS.

This account shall include the cost of operating stockyards other than small stockyards or stock pens at stations, which are classed as station facilities. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of stockyard operations; the pay of their assistants, clerks, and office attendants; also the office, traveling, and other expenses of such officers and employees.

EMPLOYEES.—The pay of foremen, subforemen, yardmen, tallymen, weighmasters, stock loaders, drovers, drivers, engineers, firemen, shovelers, watchmen, policemen, and other stockyard employees.

FUEL AND SUPPLIES.—The cost of fuel, gas, electric current, water; hay, grain, oats, and other feed for stock; straw and other bedding material; and other stockyard supplies.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of stockyards.

OTHER EXPENSES.—Payments for loss or damage to live stock, and other expenses not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over stockyard service and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

445. PRODUCING POWER SOLD.

This account shall include the cost of operating power plants, substations, transmission systems and distribution systems, for the production of power sold.

The proportion of the cost assignable to the production of the power sold only shall be included in this account. (See special instructions, sections 12, 13, and 14.)

This account shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of power plants, substations, transmission systems and distribution systems; pay of their clerks and office attendants; also the office, traveling, and other expenses of such officers and employees.

EMPLOYEES.—The pay of foremen, subforemen, engineers, firemen, electricians, system operators or load dispatchers, dynamo tenders, foremen regulators, regulators and assistants, switchboard men, brush men, oilers, wipers, wiremen, and others engaged in the operation of power plant and substation apparatus and devices.

FUEL.—The cost of fuel used in the production of power and for heating power plants.

OTHER SUPPLIES.—The cost of water, lubricants, and other power plant and substation supplies.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with producing power sold.

OTHER EXPENSES.—The items of expense not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over producing power sold and other operations, their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

### 446. OTHER MISCELLANEOUS OPERATIONS.

This account shall include the operations of facilities such as cold-storage plants; coal-storage plants; cotton-compress plants; wood-preserving plants; ice-supply plants, etc., when the cost of the facilities is includible in the road and equipment accounts and they are operated for the benefit of the carrier and others. The proportion assignable to the commercial operations only shall be included in this account.

NOTE.—When officers have immediate supervision over other miscellaneous service and other operations, their pay, office, and other expenses, as also the pay, office and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

## VII. GENERAL.

The primary accounts included in this general account are designed to show the expenses incurred of a general character not chargeable to the preceding general accounts, such as those for general administration and accounting, and those of the financial, law, real estate, tax, and claim departments.

The accounts for general expenses shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to water-line operations.

NOTE.—Directly assignable organization and administration expenses incident to investments in leased or nonoperating physical property, and in stocks, bonds, and other securities, are chargeable to income account No. 549, "Maintenance of investment organization."

### 451. SALARIES AND EXPENSES OF GENERAL OFFICERS.

This account shall include:

SALARIES.—The pay of all general officers not otherwise provided for, including salaries and fees of receivers and commissions paid to general officers in lieu of salaries.

LIST OF OFFICERS.

(See special instructions, section 22.)

Chairman of the board.
President.
Assistant to president.
Vice president.
Assistant to vice president.
Secretary.
Assistant secretary.
Transfer agent.
Treasurer.
Assistant treasurer.
Local treasurer.
Comptroller.
Assistant comptroller.
General auditor.
Auditors.
Assistant auditor.
Auditor of revenues.
Auditor of passenger accounts.
Assistant auditor of passenger accounts.
Auditor of freight accounts.
Assistant auditor of freight accounts.
Auditor of station accounts.
Auditor of disbursements.
Assistant auditor of disbursements.
Auditor of miscellaneous accounts.
Assistant auditor of miscellaneous accounts.
Auditor of coal and coke accounts.
Freight claim agent.
Assistant freight claim agent.
General accountant.
Real-estate agent.
Assistant real-estate agent.
Tax commissioner.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

EXPENSES.—The traveling and other expenses of officers whose pay is included in this account, including supplies for business cars used by them, cost of running official trains for them, and cost of membership fees and dues in railway and other associations.

NOTE A.—When officers' duties are restricted to a single department, their salaries and expenses shall be charged to that department in the accounts for superintendence or for law expenses, as may be appropriate. When officers have immediate supervision over more than one operating department, their salaries and expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE B.—The pay and expenses of the purchasing agent, assistant purchasing agent, assistant to purchasing agent, general storekeeper, division storekeeper, their clerks and attendants, shall be charged through clearing accounts "Material store expenses" and "Stationery store expenses," or material account "Fuel," as may be appropriate.

452. SALARIES AND EXPENSES OF CLERKS AND ATTENDANTS.

This account shall include the pay and expenses of clerks and attendants of the officers whose salaries are includible in account No. 451, "Salaries and expenses of general officers."

PAY OF CLERKS.—The pay of persons employed in accounting and clerical service.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Cashiers. | Mail clerks. | Stenographers. |
| Chief accountants. | Paymasters. | Ticket receivers. |
| Chief clerks. | Postmasters. | Traveling accountants. |
| Clerks. | Route agents. | Traveling auditors. |
| Inspectors. | Special agents. | |

PAY OF ATTENDANTS.—The pay of persons employed in attendance at general offices and on business cars.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Bank messengers. | Janitors. | Telephone operators. |
| Chauffeurs. | Messengers. | Ushers. |
| Cleaners. | Porters. | Waiters. |
| Cooks. | Pump men. | Watchmen. |
| Drivers of service wagons. | Stablemen. | |
| Elevator operators. | Superintendent of general office building. | |
| Engineers. | | |
| Firemen. | Telegraph operators. | |

EXPENSES.—The traveling and other expenses of employees designated above, including the cost of supplies for business cars and cost of running official trains for them.

453. GENERAL OFFICE SUPPLIES AND EXPENSES.

This account shall include the office expenses of officers designated in account No. 451, "Salaries and expenses of general officers."

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

| | | |
|---|---|---|
| Alterations of partitions and fixtures in general offices. | Furniture repairs and renewals. | Rent of tabulating machines. |
| Atlases and maps. | Heating. | Repairs of rented general offices. |
| Books for office use. | Horse keep. | Reports of commercial standings |
| Cable tolls. | Lighting. | Service of automobiles. |
| Cleaning. | Local messenger service. | Telegraph service. |
| Express charges. | Periodicals and newspapers. | Telephone service. |
| | Rent of general offices. | Watchmen service. |

NOTE.—The proportion of general office expenses occasioned by the law department shall be included in account No. 454, "Law expenses."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

454. LAW EXPENSES.

This account shall include the pay and the office and other expenses, when provided for elsewhere, of officers and employees of the law department, the of suits, and the payments of special law fees.

LIST OF OFFICERS AND EMPLOYEES.

(See special instructions, section 22.)

General counsel.
General solicitor.
Assistant counsel.
Solicitor.
Commerce counsel.
Commerce agent.
Special counsel.
Statutory attorney.
Attorney.
Counsel.
Law agent.
Clerks.
Office attendants.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Arbitrators' services in settlement of disputed questions.
Cost of taking depositions.
Cost of testimony.
Cost of suits.
Court bonds.
Court expenses.
Drawing and recording agreements as to trackage rights, etc.
Express charges.
Fees and retainers of attorneys (not regular employees).
Law books.
Legal forms.
Legal reports.
Membership fees and dues in association protect carriers against litigation in respe patents.
Membership fees and dues in law associati
Notarial fees not provided for elsewhere.
Office expenses.
Printing of briefs, testimony, and reports.
Proportion of general office expenses.
Rent of offices.
Special fees.
Telegraph service.
Telephone service.
Traveling expenses.
Witness fees not provided for elsewhere.

455. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insur the carrier against loss, through injuries to persons or damage to or destructio loss of property, whether caused by fire, accident, or other cause, when such to the carrier would be chargeable to general account VII, General; also p miums on fidelity bonds of officers and employees whose pay is chargeable to g eral account VII, General. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insur account, to which account shall be charged the amount of all claims for injuries to persons and d ages to the property covered by its insurance. To such account shall also be charged all reinsur premiums paid to insurance companies, and to it shall be credited all amounts recovered from in ance companies for damage to the property reinsured by them.

456. RELIEF DEPARTMENT EXPENSES.

This account shall include salaries and expenses incurred in connection w conducting relief departments; also contributions to such departments.

457. PENSIONS.

This account shall include pensions or gratuities paid out of the carrier's fu to retired employees or their heirs and the expenses solely in connection the with.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

458. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in general offices and not chargeable to other accounts, including the cost of printing annual reports, contracts, leases, stock certificates, and passes.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Parchment paper.
Passes.
Pay checks.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper.
Wringers for copying presses.

NOTE A.—The cost of printing briefs, legal forms, testimony, reports, etc., for the law department is chargeable to account No. 454, "Law expenses."

NOTE B.—The cost of printing bonds, etc., in connection with the carrier's funded debt shall be included in balance-sheet account No. 725, "Discount on funded debt."

459. VALUATION EXPENSES.

This account shall include expenses incident to the ascertainment (in accordance with the Act to Regulate Commerce as amended March 1, 1913, or with other Federal or State requirements) of the value of property owned or used by the carrier, such expenses including pay, and office, traveling, and other expenses of officers specially employed or assigned to such work, and of their assistants, clerks, and attendants, and the cost of stationery and printing, and of engineering supplies consumed.

NOTE.—No charge shall be made to this account for the salaries of officers or of their clerks and attendants for incidental services in connection with valuation work; but special office, clerical, traveling, and incidental expenses incurred by these officers on account of such work shall be included as a part of the cost of the work.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

460. OTHER EXPENSES.

This account shall include incidental general expenses which are not properly chargeable to any of the foregoing accounts.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Cost of draping buildings.
Cost of publishing annual reports in newspapers, and other corporate and financial notices of general character.
Cost of publishing notices of stockholders' meetings and of election of directors.
Donations on account of catastrophes, epidemics, etc.
Donations to local fire departments.
Donations to Y. M. C. A., and similar institutions.
Exchange on checks cashed or deposited.
Exchange on drafts bought.
Fees and expenses paid to directors and trustees.
Loss through payment of wages to a wrong person.
Penalties assessed for nonpayment of claims for overcharges.

461. GENERAL JOINT FACILITIES—DR.

This account shall include the carrier's proportions of general expenses incurred by others incident to maintaining and operating tracks, yards, terminals, and other facilities used jointly.

NOTE.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the expense of general administration of tracks, yards, terminals, and other facilities administered by others, and in the joint use of which the carrier participates. (See special instructions, section 9.)

462. GENERAL JOINT FACILITIES—CR.

This account shall include amounts chargeable to others as their proportions of general expenses incurred by the carrier incident to maintaining and operating tracks, yards, terminals, and other facilities used jointly.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the expense of general administration of tracks, yards, terminals, and other facilities administered by the carrier, and in the joint use of which others participate. (See special instructions, section 9.)

## VIII. TRANSPORTATION FOR INVESTMENT—CR.

This account shall include fair allowances representing the expense to the carrier of transporting, on transportation trains, men engaged in and material for construction.

Amounts credited to this account shall be concurrently charged to the appropriate property investment accounts.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

INTERSTATE COMMERCE COMMISSION.
WASHINGTON

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ORDER

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At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2d day of June, A. D. 1924

The matter of a uniform system of accounts to be kept by steam roads being under consideration:

It is ordered, That section 19 of the special instructions in the Classification of Operating Revenues and Operating Expenses of Steam Roads, Issue of 1914, as prescribed by the order of the commission of April 26, 1921, be and is hereby canceled and the following is prescribed as section 19 of the special instructions:

19. EQUALIZATION OF EXPENSES.-(a) When carriers adopt a budget or estimate of expenditures for maintenance of fixed improvements or equipment for the year, such authorized estimates may be equalized by division into 12 equal parts, if for a full year, or into a number of equal parts corresponding to the number of months remaining in the year after the adoption of the maintenance program. If advantage is taken of the optional accounting prescribed in this section, the appropriate primary accounts chargeable with the accrued liabilities and the equalization account combined shall contain, each month, amounts aggregating one of such equal parts.

bined shall contain, each month, amounts aggregating one of such equal parts.

(b) Adequate records shall be kept to fully support the estimates for expenditures for maintenance which form the basis of entries to accounts 280, "Equalization--Way and structures," and 338, "Equalization--Equipment," and these records shall be filed in such manner as to be readily accessible for examination by representatives of the Interstate Commerce Commission. The equalization accounts are provided in order that their use may show, for each month, the adjustment necessary between accrued liabilities included in the other primary accounts and the equal monthly proportion of the authorized estimate of maintenance expenses for the period.

(c) If the accrued liabilities chargeable to the primary accounts do not aggregate a sum equivalent to the equal monthly proportion of the estimated cost of maintaining such way and structures and equipment as are provided for in the budget, and amount sufficient to make up the difference shall be charged to the appropriate equalization account. If amounts chargeable to the primary accounts are more than the equal monthly proportion of the budget, the difference shall be credited to the equalization account.

(d) Estimates of expenses, other than under general accounts I and II, on account of personal injury or loss and damage liability, for stationery and printing, and for advertising, may be equalized in the monthly accounts for the year by use of the regular primary accounts.

(e) Amounts charged or credited to operating expenses under general accounts I and II for equalization purposes shall be credited or charged to reserve accounts styled "Equalization reserve--Way and structures," or "Equalization reserve--Equipment." Balances in such accounts and in equalization reserve accounts created under the provisions of paragraph (d) herein shall be carried, during the year, prior to clearance at the close of the fiscal period, in account 774, "Operating reserves."

(f) All equalization reserve accounts shall be cleared at the close of the year through the accounts used in creating the reserves.

(g) Estimates to cover unaudited items of accrued revenue, expense, and income shall be accounted for through accounts 727, "Other unadjusted debits," and 778, "Other unadjusted credits," as directed in section 2 of general instructions in the Classification of Operating Revenues and Operating Expenses and in the order of the commission of June 2, 1924, interpreting those instructions.

It is further ordered, That accounts 280, "Equalization--Way and structures," and 338, "Equalization--Equipment," with the texts pertaining thereto, as follows, be prescribed as a part of the Classification of Operating Revenues and Operating Expenses of Steam Roads, Issue of 1914:

Account 280, "Equalization--Way and Structures"

Account 280, "Equalization--Way and Structures"

This account, the use of which is optional, shall include an adjustment of the monthly proportion of the estimated or authorized maintenance expenses for the year, as provided for in section 19 of the special instructions, the amount included herein being the difference between actual expenditures as reflected in other primary accounts under this general account, and the equal monthly proportion of the estimate for the period. Concurrently, a credit, or debit, as may be appropriate, shall be made to a ledger account styled, "Equalization reserve--Way and structures."

Account 338, "Equalization--Equipment"

This account, the use of which is optional, shall include an adjustment of the monthly proportion of the estimated or authorized maintenance expenses for the year, as provided for in section 19 of the special instructions, the amount included herein being the difference between actual expenditures as reflected in other primary accounts under this general account, and the equal monthly proportion of the estimate for the period. Concurrently, a credit, or debit, as may be appropriate, shall be made to a ledger account styled, "Equalization reserve--Equipment."

It is further ordered, That section 20 of special instructions on page 38 of the Classification of Operating Revenues and Operating Expenses of Steam Roads, Issue of 1914, be and is hereby canceled.

It is further ordered, That this order shall become effective on January 1, 1924.

By the commission, division 4.

GEORGE B. McGINTY,

Secretary.

(SEAL.)

INTERSTATE COMMERCE COMMISSION

WASHINGTON

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In the Matter of a Uniform System of Accounts to be Kept by Steam Roads

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At a session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 25th day of July, A. D. 1925.

In the matter of providing a uniform system of accounts for steam railroads for accounting and reporting the operation of train service for the joint benefit of two or more carriers.

*It is ordered*, That Notes B to accounts 151, "Joint facility—Cr.," 152, "Joint facility—Dr.," 390, "Operating joint yards and terminals—Dr.," and 391, "Operating joint yards and terminals—Cr.," be and are hereby cancelled.

*It is further ordered*, That Note D to account 101, "Freight," and Note C to account 102, "Passenger," be and are hereby amended by the addition of the following:

The accounting in connection with transportation service trains operated for the joint benefit of two or more carriers shall be as provided by paragraph 2 of section 9 of the special instructions of the Classification of Operating Expenses.

*It is further ordered*, That Notes B to accounts 412, "Operating joint tracks and facilities—Dr.," and 413, "Operating joint tracks and facilities—Cr.," be and are hereby amended to read as follows:

No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account except such expenses pertaining to the operation of transportation train service for the joint benefit of two or more carriers.

*It is further ordered*, That paragraph 2 of section 9 of the special instructions of the Classification of Operating Expenses be and is hereby amended to read as follows:

Train service operated for the joint benefit of two or more carriers in connection with line haul of traffic shall be considered a joint facility operation and the settlement between carriers of revenues and expenses thereof shall be included in the appropriate joint facility accounts. When transportation train service of several carriers is pooled each carrier shall include in the

appropriate primary revenue and expense accounts the revenues and expenses pertaining to the trains operated by it. The difference between such revenues and expenses and its proportion of the total pooled revenues and expenses shall be adjusted through the appropriate joint facility operating revenue and operating expense accounts.

*It is further ordered*, That the names and texts of accounts 336 and 337 be and are hereby amended to read as follows:

336. MAINTAINING JOINT EQUIPMENT—DR.—This account shall include the carrier's proportion of expenses incurred by others in maintaining equipment used in the operation of trains for joint benefit, in the operation of joint terminals, and in the maintenance of jointly used tracks, yards, and other facilities, including the carrier's proportion of expenses of repairing equipment made necessary by accidents in such service when such expenses are participated in by more than one party to the joint arrangement.

NOTE.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the expense of maintaining equipment which is maintained by others and in the joint use of which the carrier participates.

337. MAINTAINING JOINT EQUIPMENT—CR.—This account shall include amounts chargeable to others as their proportions of expenses incurred by the carrier in maintaining equipment used in the operation of trains for joint benefit, in the operation of joint terminals, and in the maintenance of jointly used tracks, yards, and other facilities, including the proportion recoverable from others of the expenses of repairing equipment made necessary by accidents in such service, when such expenses are participated in by more than one party to the joint arrangement.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the expense of maintaining equipment which is maintained by the carrier and in the joint use of which others participate.

*It is further ordered*, That this order shall become effective on August 1, 1925.

By the commission, division 4.

[SEAL.] GEORGE B. MCGINTY,
*Secretary.*

INTERSTATE COMMERCE COMMISSION

WASHINGTON

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ORDER

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C. on the 18th day of April, A. D. 1928.

The matter of accounting for rents chargeable to Operating Expenses for property used in transportation service being under consideration.

It is Ordered, That there shall be added to the Special Instructions in the Classification of Operating Expenses, Issue of 1914, the following instruction:

> 23. There shall not be included in these accounts rents paid for property (used in transportation service) which has been listed in the basic valuation inventory as carrier property used but not owned. The rents for such property (otherwise chargeable to these accounts) shall be charged to account 543, "Miscellaneous rents."

It is Further Ordered, That this order shall become effective on January 1, 1928.

By the Commission, Division 4.

(SEAL)

GEORGE B. McGINTY,
Secretary.

INTERSTATE COMMERCE COMMISSION

240

WASHINGTON

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In the Matter of a Uniform System of Accounts to be Kept by Steam Roads

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At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 23rd day of November, 1928.

The matter of charges to operating expenses to provide for the contractual payment of pensions to employees regularly retired for superannuation or disability being under consideration:

IT IS ORDERED, That the following instructions are hereby prescribed as a note following the text under account 457, "Pensions":

Note. If the carrier has definitely undertaken by contract to pay pensions to employees when regularly retired for superannuation and/or disability and has established a fund to be held in trust for such pension purposes, it shall charge to this account monthly amounts determined through the application of equitable actuarial factors to the current payrolls, which, together with interest accruals on the trust funds, will as nearly as may be, provide for the payment of such pensions, or for the purchase of annuities corresponding thereto. The amounts so charged shall be concurrently credited to a reserve account under account 769, "Liability for provident funds". The amounts accrued in each year shall correspond to the aggregate of the amounts paid into the trust fund and expended directly by the carrier for pensions or annuities during the year. The carrier shall maintain a complete record of the actuarial computations through which the accrual each month of its pension liabilities is established.

Upon the adoption of the accrual plan of accounting, pension payments to employees retired before the adoption of such plan shall be charged to an existing pension reserve or to profit and loss.

Before adopting the accrual plan of accounting for pensions the carrier shall inform the Commission of the details of its pension plan giving full statement of the

facts which in its judgment establishes a contractual obligation for pension payments together with the actuarial formula under which it proposes to create its pension trust fund, and also a copy of the declaration of trust under which the fund is established.

No charge to this account shall be made in anticipation of discretionary pension payments in the future.

IT IS FURTHER ORDERED, That the accounting authorized by this order shall be made effective as of the date, not earlier than January 1, 1928, on which the carrier makes effective its definite contractual obligation to pay such pensions.

By the Commission, Division 4.

GEORGE B. McGINTY

Secretary.

(SEAL)

# INTERSTATE COMMERCE COMMISSION
## WASHINGTON

**In the Matter of the Recovery and Payment of Excess Net Railway Operating Income Under the Provisions of Section 15a of the Interstate Commerce Act**

At a session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2d day of June, A. D. 1924

The commission having under consideration the requirements of its orders dated January 16, 1922, March 16, 1922, March 21, 1923, and March 17, 1924, in the above-entitled matter, and in order to procure the proper accounting results from the provisions of section 2 of general instructions in the Classification of Operating Revenues and Operating Expenses; to provide rules for similar accounting for items affecting income accounts; and to prescribe accounting procedure that will assist the commission in administering the recapture provisions of the act; said section 2 of the accounting instructions reading as follows:

2. UNAUDITED ITEMS AFFECTING OPERATING ACCOUNTS.—When for any cause the amount of any item affecting operating revenues or operating expenses can not be accurately determined in time for inclusion in the accounts of the month in which the transaction occurs, the amount of the item shall be estimated and in such form charged or credited to operating accounts and credited to balance-sheet account No. 778, "Other unadjusted credits," or charged to balance-sheet account No. 727, "Other unadjusted debits," as may be appropriate, the necessary adjustments being made later when the item is audited. The carrier is not required to anticipate minor items which would not appreciably affect the operating accounts.

*It is ordered:*

1. In determining the amount of recapturable income the commission will exercise the power to determine the reasonableness of estimates included in the accounts to represent unaudited items and will initiate charges or credits in the returns for this purpose where necessary to correct a deficiency on the part of the carrier.

2. Estimates included in the accounts by the carrier to represent unaudited items shall be on a basis determined to be equitable from

the carrier's experience and best sources of information. Maintenance work not performed shall not be considered an unaudited item. The records shall indicate in detail the facts upon which such estimates are based, and the details shall be preserved in the files permanently unless their destruction shall be authorized subsequently by the commission.

3. Accounting on the foregoing basis is prescribed for items affecting income accounts embraced in the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, effective July 1, 1914, in order to give definite effect, for the accounting purposes here under consideration, to section 1 of special instructions on page 13 of that classification reading as follows:

> 1. INCOME ACCOUNTS DEFINED.—Income accounts are those designed to show, as nearly as practicable, for each fiscal period, the total amount of money that a carrier becomes entitled to receive for services rendered, the returns accrued upon investments, the accrued costs paid or payable for the services rendered by it, the losses sustained by it, the amounts accrued for taxes, for use of moneys and for use of properties of others, and the appropriations made from income during the period. The net balance of income (or loss) shall be carried to Profit and Loss.

4. Balances in accounts 727, "Other unadjusted debits," and 778, "Other unadjusted credits," representing unaudited items shall be analyzed and explained according to the primary accounts used in creating the suspense items. Balances for each year shall be kept separate.

5. Where errors are discovered affecting net railway operating income, whether or not corrected by the carrier in a year subsequent to that in which the error was made, the commission reserves the right to correct the return for the purposes of section 15a, for the year or years affected thereby, and to require such adjustments in current accounts as may be necessary.

*It is further ordered*, That for the accomplishment of the purposes set forth herein the effective date of this order will be March 1, 1920.

By the commission, division 4:

[SEAL.]

GEORGE B. MCGINTY,
*Secretary.*

U. S. GOVERNMENT PRINTING OFFICE: 1930

[fol. 239] PLAINTIFF'S EXHIBIT 5

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of order of the Commission entered December 17, 1917, Interpretations of Accounting Classifications, prescribed by the Interstate Commerce Commission for Steam Roads, in accordance with Section 20 of the Act to Regulate Commerce, effective January 1, 1918, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 6th day of September, A. D. 1932. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission. 1887.)

INTERSTATE COMMERCE COMMISSION
WASHINGTON

ORDER

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads.

At a Session of the INTERSTATE COMMERCE COMMISSION Division 4, held at its office in Washington, D. C. on the 15th day of November, A.D., 1929.

The matter of accounting for taxes on rented property being under consideration:

It is Ordered: That Accounting Bulletin No.15, Interpretations of Accounting Classifications, prescribed by the Interstate Commerce Commission, for Steam Roads effective January 1, 1918, be and is hereby amended by the addition of the following:

CASE 294

Query:

To what account shall be charged taxes on railway property the rents from which are includable in account 510, "Miscellaneous rent income."

rent income."

(a) When paid and assumed by the lessor?

(b) When assumed by the lessee either through direct payment of the taxes or through reimbursement of the lessor?

Answer:

To account 532, "Railway tax accruals."

(a) By the lessor

(b) By the lessee.

By the Commission, Division 4.

(SEAL)

GEORGE B. McGINTY
Secretary.

Accounting Bulletin No. 15

# INTERPRETATIONS

OF

# ACCOUNTING CLASSIFICATIONS

PRESCRIBED BY THE

## INTERSTATE COMMERCE COMMISSION

FOR

# STEAM ROADS

IN ACCORDANCE WITH SECTION 20 OF THE
ACT TO REGULATE COMMERCE

*Effective on January 1, 1918*

(Supersedes Accounting Bulletin No. 10)

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

## THE INTERSTATE COMMERCE COMMISSION.

HENRY C. HALL, *Chairman.*

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|---|---|
| EDGAR E. CLARK. | WINTHROP M. DANIELS. |
| JAMES S. HARLAN. | CLYDE B. AITCHISON. |
| CHARLES C. MCCHORD. | ROBERT W. WOOLLEY. |
| BALTHASAR H. MEYER. | GEORGE W. ANDERSON. |

GEORGE B. MCGINTY, *Secretary.*

(2)

## ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 17th day of December, A. D. 1917.

The subject of a Uniform System of Accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

*It is ordered*, That the interpretations of the accounting classifications for steam roads, prepared under the direction of this Commission and embodied in printed form to be hereafter known as Accounting Bulletin No. 15, a copy of which is now before this Commission, be, and the same is hereby, approved; that a copy thereof, duly authenticated by the Secretary of the Commission, be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Bureau of Carriers' Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

*It is further ordered*, That the accounting methods directed in the interpretations contained in the said Accounting Bulletin No. 15 be, and they are hereby, prescribed for the use of steam roads subject to the provisions of the Act to Regulate Commerce, as amended, in the keeping and recording of their accounts.

*It is further ordered*, That January 1, 1918, be, and it is hereby, fixed as the date on which the said Accounting Bulletin No. 15 shall become effective.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
*Secretary.*

INTERSTATE COMMERCE COMMISSION,
BUREAU OF CARRIERS' ACCOUNTS,
*Washington, D. C., January 8, 1918.*

TO ACCOUNTING OFFICERS OF STEAM RAILWAYS:

In this accounting bulletin is presented a reissue of Cases 1 to 203, inclusive, as formerly stated in Accounting Bulletin No. 10, except for the correction of misplaced terms in Case 176. To these previously published cases are now added a supplementary series embodied in Cases 204 to 293, inclusive.

The cases now given their initial publication have been submitted in tentative form to the Association of American Railway Accounting Officers.

FRED W. SWENEY,
*Chief Examiner of Accounts.*

# INTERSTATE COMMERCE COMMISSION ACCOUNTING BULLETIN NO. 15.

## INTERPRETATIONS OF ACCOUNTING CLASSIFICATIONS--STEAM ROADS.

### CASE 1.

*Query.* Is it essential that books be written up monthly?

*Answer.* Accounts shall be written up monthly.

### CASE 2.

*Query.* In adjusting material accounts to the basis of inventory, what account or accounts shall be credited or debited?

*Answer.* Determined differences in accounting for important classes of material are ordinarily assignable to discrepancies in charges to particular accounts since the last inventory and shall be adjusted accordingly. Other differences shall be apportioned among the primary expense accounts on the basis of the material charges to them since the last inventory. (*See Case 74.*)

### CASE 3.

*Query.* Road A grants separately to Road B and Road C the right to operate over its tracks which it maintains but over which it does not itself operate. The lessees each pay a proportion of a fixed rent, and reimburse Road A proportionately for taxes on and maintenance of the leased tracks. What is the proper accounting for these items by the carriers interested?

*Answer.* Road A shall charge the taxes to account No. 532, "Railway tax accruals." The amounts payable by Roads B and C representing rent and taxes shall be credited by Road A to account No. 508, "Joint facility rent income," and shall be charged by Roads B and C to account No. 541, "Joint facility rents." The amounts payable by Roads B and C representing the cost of maintenance shall be accounted for in the appropriate joint facility accounts in Operating Expenses. (*See Case 28.*)

### CASE 4.

*Query.* To what account shall be charged damages for overflows caused by inadequate waterways?

*Answer.* To appropriate accounts in Maintenance of Way and Structures when the property damaged is the carrier's own; to account No. 416, "Damage to property," when it is the property of others and not held by the carrier under lease. If, however, the damage is directly connected with projects the cost of which is chargeable to road and equipment accounts, the amount of the damage shall be included in the cost of the work.

### CASE 5.

*Query.* What is the proper accounting for the proportions of pay and expenses of joint car inspectors which carriers pay to foreign roads?

*Answer.* They shall be charged to the appropriate equipment repair accounts. They are not joint facility items.

CASE 6.

*Query.* The text of the clearing account "Material store expenses" provides that the account shall be closed out at the end of the year. Shall not a balance representing cost of handling material in stock at the end of the year be carried over to the next year?

*Answer.* Such balance shall not be carried over to the next year.

CASE 7.

*Query.* To what account shall be charged expenses of hauling loads from mines to points of concentration and distributing empties to mines?

*Answer.* If the mines are located within the switching limits of the concentration station, such expenses shall be charged to the appropriate yard-service accounts. If not so located, and the freight is billed from the mines, the entire service shall be classed as train service.

The expenses and the statistics of locomotive-miles, car-miles, train-miles, ton-miles, etc., shall be treated accordingly. (*See Case 97.*)

CASE 8.

*Query.* To what account shall be charged the wages of motormen and the expenses of operating gasoline motor cars used in revenue train service?

*Answer.* Wages of motormen are provided for in account No. 393, "Train motormen." The expense for gasoline and other fuel, lubricants, and other supplies, including enginehouse expenses, if any, shall be charged to account No. 402, "Train supplies and expenses." The carrier's records shall be kept in such manner as to show separately the cost of gasoline or other fuel consumed in the operation of such cars.

CASE 9.

*Query.* Road A turns Road B's locomotive. A charges B for turning the locomotive and for use of the tracks. What is the correct accounting by both roads?

*Answer.* If the use of the facilities is not in connection with the joint use regularly of other facilities, the compensation for turning the locomotive and for use of the tracks shall be credited by A to revenue account No. 143, "Miscellaneous," and charged by B to expense account No. 402, "Train supplies and expenses." If, however, the use of these facilities is under a joint facility arrangement, the accounting by each road shall be in accordance with the rules prescribed for joint facility accounts.

CASE 10.

*Query.* When the president of a carrier company is directly in charge of the operating departments, how shall the salaries and expenses of that officer and his clerks be distributed?

*Answer.* If the president is immediately in charge of the departments usually supervised by officers named in the accounts "Superintendence" under Maintenance of Way and Structures, Maintenance of Equipment, Traffic, and Transportation, his salary and expenses and those of his clerks and assistants shall be apportioned in accordance with Note A under expense account No. 451, "Salaries and expenses of general officers." If the president has, as is usual, only general supervision over the various departments, his salary and expenses shall be charged to expense account No. 451, "Salaries and expenses of general officers."

CASE 11.

*Query.* Road B is required, under agreement with Road A, to provide equipment to replace that destroyed or sold, or to pay an equivalent in cash to Road A. Is it per-

missible for B to keep a dismantled-equipment account wherein to show the exact amount due A because of dismantled and sold equipment?

*Answer.* Such an account may be kept. The credit balance in such account shall be included in balance-sheet account No. 778, "Other unadjusted credits."

CASE 12.

*Query.* In what account shall be included the cost of coal, wood, and oil for use in firing up locomotives for service?

*Answer.* In the appropriate account "Fuel for locomotives."

CASE 13.

*Query.* To what account shall a carrier credit amounts received for the privilege of placing a telephone line over its tracks? The right is reserved to revoke the privilege at pleasure.

*Answer.* The privilege given is merely a license, and the receipts therefrom shall be credited to income account No. 519, "Miscellaneous income."

CASE 14.

*Query.* To what accounts shall be credited amounts charged to other roads for transferring the lading of cars? These transfers are made necessary through fault of the other roads, and the charges include the cost of transferring the lading, per diem or car hire accruing upon the cars, and a charge per car for switching.

*Answer.* The portions of such charges covering per diem or car hire accruing on cars at the time of transfer shall be credited to the account "Hire of freight cars." The portions of the charges covering the cost of transferring the contents of cars shall be credited to the account to which the cost of the transfer service is charged. The charges per car for switching such cars shall be credited to revenue account No. 110, "Switching."

CASE 15.

*Query.* A railroad operates some of its station restaurants and leases others at a nominal rent, the lessee receiving all revenues and paying all expenses except as to coal and ice, which are furnished without charge by the railroad. To what account shall the railroad charge the cost of the coal and the ice thus furnished for use in the leased restaurants?

*Answer.* Such cost shall be charged to operating expense account No. 376, "Station supplies and expenses."

CASE 16.

*Query.* A railroad purchased a building, apart from its right of way, for use as a dwelling by a superintendent, taking the title thereto in the name of a vice president, who filed with the railroad a declaration of trust. How shall this expenditure be classified?

*Answer.* Such expenditure shall be included in balance-sheet account No. 705, "Miscellaneous physical property."

CASE 17.

*Query.* What accounts shall be charged with the loss on obsolete material which is taken out of stock and sold as scrap?

*Answer.* Such loss shall be charged to the operating expense accounts to which the material ordinarily would be charged if issued for use.

CASE 18.

*Query.* Road A and Road B operate their trains over a portion of A's tracks. A charges B rent based on the valuation of the property. B maintains and operates these tracks and is reimbursed by A for a portion of the expenses, reckoned upon a wheelage basis. What is the correct accounting?

*Answer.* Both roads shall include the rent in joint facility rent accounts in Income. The cost of maintenance and operation shall be included in B's primary accounts; the proportion of such cost paid by A shall be included by both roads in the appropriate joint facility expense accounts. (*See Case 28.*)

CASE 19.

*Query.* To what account shall be charged expenses and settlement payments on account of injuries to a prospective passenger caused by a maintenance-of-way work train?

*Answer.* The class of train causing the injury determines the distribution of the charge. Therefore such expenses and settlements shall be charged to maintenance expense account No. 274, "Injuries to persons." (*See Case 119.*)

CASE 20.

*Query.* Road A makes all repairs to Road B's equipment and charges B the actual cost thereof. For the purpose of determining accurately the cost of these repairs is it permissible that the operations of A's shops be treated through a clearing account?

*Answer.* It is.

CASE 21.

*Query.* How shall a carrier dispose of amounts allowed for loyal service of certain employees during a strike?

*Answer.* Such allowances shall be distributed to the accounts to which the pay of the employees is chargeable.

CASE 22.

*Query.* In what accounts shall be included the pay and expenses of—

(*a*) An auditor who acts as general bookkeeper?

(*b*) A general superintendent who is immediately responsible for the whole local management of the road?

(*c*) A general agent who acts as clerk to the general superintendent and as local agent at the only station where there is an agent?

*Answer.* Such expenses shall be included as follows:

(*a*) Expense account No. 451, "Salaries and expenses of general officers."

(*b*) Shall be apportioned as directed in Note A under account No. 371, "Superintendence."

(*c*) The proportion covering services as clerk shall be apportioned in accordance with Note A under account No. 371, "Superintendence," and the remainder shall be included in account No. 373, "Station employees."

CASE 23.

*Query.* The tracks, station buildings, and other facilities between X and Y, owned by Road A, are used jointly by A and Road B. For the use of these facilities B pays A a specified rent upon a valuation basis, proportion of cost of maintenance upon a wheelage basis, and agreed proportion of the cost of station service (principally train telegraph service).

B's trains handle A's local freight and passenger business between these points in consideration of a stipulated percentage of revenue. What is the correct accounting by each railroad?

*Answer.* The specified rent shall be included in the joint facility rent accounts in Income. Proportion of cost of maintenance and operation shall be included in the appropriate joint facility operating expense accounts.

The proportion of the cost of maintaining and operating these tracks being provided for in a distinct arrangement, the percentage of revenue upon the local business retained by A shall be considered as additional rent and included by each carrier in the appropriate joint facility accounts in Income.

Road B shall include in its revenues the entire receipts from the local freight and passenger traffic between X and Y which is transported upon its trains and shall account for such traffic in its statistics.

CASE 24.

*Query.* How shall the revenues be classified when a carrier furnishes picnic trains at rates based on the number of cars in the trains, regardless of the number of people carried?

*Answer.* They shall be included in account No. 111, "Special service train."

CASE 25.

*Query.* To what account shall be credited the slight profits accruing from percentages added to bills against other companies and individuals to cover superintendence, use of tools, etc.?

*Answer.* Such profits shall be credited to Operating Expenses. (*See Cases 61 and 79.*)

CASE 26.

*Query.* Shall per diem reclaims be treated as a matter of hire of equipment?

*Answer.* They shall be so treated. (*See Case 29.*)

CASE 27.

*Query.* To what account shall be credited the amounts received upon the basis of a rate per car for switching express cars from one railroad to another as a part of a regular transportation movement?

*Answer.* Amounts received for such services shall be credited to revenue account No. 110, "Switching."

CASE 28.

*Query.* Road B has trackage rights over the line of Road A between two points, the consideration for these rights being based on a toll per loaded car. How shall the payments for these trackage rights be accounted for when A maintains the tracks between the two points?

*Answer.* Road A shall charge the expenses of maintenance, operation, etc., to its primary operating expense accounts. The charges against B shall be fairly apportioned by A among the joint facility operating expense and income accounts. The amount apportioned to maintenance shall be credited by A to account No. 279, "Maintaining joint tracks, yards, and other facilities—Cr."; that to operation, to account No. 391, "Operating joint yards and terminals—Cr.", or to account No. 413, "Operating joint tracks and facilities—Cr.", according to location of facilities; and that to income for interest on valuation or rent, to account No. 508, "Joint facility rent income." Road B shall charge the corresponding joint facility operating expense and income accounts.

In case considerable general expenses are involved in operations of the joint facilities, amounts shall be apportioned to cover such general expenses, which amounts shall be included in accounts "General joint facilities."

CASE 29.

*Query.* How shall per diem charges paid and reclaims received be accounted for by a switching railroad whose cars seldom leave its own line?

*Answer.* The per diem shall be charged and the reclaims shall be credited to income account "Hire of freight cars." (*See Case 26.*)

CASE 30.

*Query.* A railroad company sends out a locomotive and crew to pick up lumber lost off a freight train belonging to another company. To what account shall the wages of the crew and the compensation for the use of the locomotive be charged, and to what accounts credited?

*Answer.* The wages of the crew and expenses of the locomotive shall be charged by the company responsible for the loss of the lumber to expense account No. 418, "Loss and damage—Freight," and the creditor shall credit these items to the accounts to which they were originally charged. If a charge is made for rent of the locomotive, the amount thereof shall be included by both companies in the appropriate locomotive rent account in Income.

CASE 31.

*Query.* Road A pays all the expenses of a train service operated from an intermediate point on its lines to an intermediate point on Road B's line and charges B upon basis of train mileage the cost of the service while upon B's tracks. Each road receives the revenue accruing upon its own line. What is the proper accounting for the expense of the service?

*Answer.* The expenses shall be included by each railroad in the primary expense accounts other than joint facility accounts. This is not a joint facility. If any portion of the charge for the train service is for hire of equipment, the amount thereof shall be included in the appropriate equipment rent accounts in Income.

CASE 32.

*Query.* It is provided in account No. 418, "Loss and damage—Freight," that interest and penalties assessed for nonpayment of freight claims shall be included in this account. Is this provision intended to include interest and penalties on overcharge claims?

*Answer.* Interest and penalties on loss and damage claims shall be included in account No. 418, "Loss and damage—Freight." Interest on overcharge claims shall be included in account No. 547, "Interest on unfunded debt." Penalties on overcharge claims shall be included in account No. 460, "Other expenses."

CASE 33.

*Query.* In what account shall be included the rents paid by one carrier to another carrier for the exclusive use of yards and tracks—

(*a*) When upon the basis of a specified amount per month?

(*b*) When upon the basis of the number of cars handled over such tracks?

All expenses of maintenance are paid by the lessee. The taxes are paid by the lessor.

*Answer.* The rents, under either of the conditions stated, shall be included in the lease-of-road accounts in Income.

CASE 34.

*Query.* A company keeps a separate or independent fund from which pensions are disbursed. A certain amount per month, making an annual total 12 times as great, is appropriated through the Income Account and credited directly to an open account, which is closed annually when the amount is paid over. The pension fund is invested in interest-bearing securities. Whenever pensions are paid the amounts are debited to an open account and about every quarter collected from the trustee of the fund. There are no administration or other expenses in connection therewith. What is the proper accounting?

*Answer.* Amounts thus appropriated shall be charged to account No. 552, "Income applied to sinking and other reserve funds," and shall be concurrently credited to account No. 782, "Miscellaneous fund reserves." When such funds have been paid into the hands of trustees, the amount thereof shall be charged to balance-sheet account No. 721, "Insurance and other funds." The amount of pensions accrued shall be charged to account No. 457, "Pensions," and when paid shall be credited to account No. 721, "Insurance and other funds." Concurrently account No. 782, "Miscellaneous fund reserves," shall be charged, and Profit and Loss credited with an equal amount.

CASE 35.

*Query.* To what account shall be credited the difference between the value of special-admission amusement coupons issued in connection with transportation and the amount paid on the basis of actual collection?

*Answer.* The difference shall be credited to revenue account No. 143, "Miscellaneous."

CASE 36.

*Query.* To what account shall be charged the expense of removal of brasses from cars to prevent the loss of the brasses by theft when the cars are stored in hazardous locations?

*Answer.* Such expense shall be charged to the appropriate car repair account.

CASE 37.

*Query.* To what account shall be charged the amount of a judgment, including court costs, in an action of the United States against a carrier on account of defective appliances on cars?

*Answer.* It shall be charged to profit and loss account No. 621, "Miscellaneous debits." (*See Cases 38 and 90.*)

CASE 38.

*Query.* What account shall be charged with United States Government fines imposed by the collector of customs for the delivery of freight in bond directly to the consignee, instead of to the collector of the port, the offense being due to the failure of the delivery clerk at a freight yard to notify the customhouse inspector at the point of delivery?

*Answer.* They shall be charged to profit and loss account No. 621, "Miscellaneous debits." (*See Cases 37 and 90.*)

CASE 39.

*Query.* To what account shall be charged premiums paid to procure currency needed to pay the wages of employees?

*Answer.* They shall be charged to expense account No. 460, "Other expenses."

CASE 40.

*Query.* Two box cars which were carried in the carrier's account at the salvage value only are condemned, the bodies taken for use as bunk houses for track laborers, and the trucks put into service for wrecking purposes. What is the correct accounting?

*Answer.* Assuming that the equipment had been regularly written down to the amount of the salvage value, this amount shall be credited to road and equipment account No. 53, "Freight-train cars"; the proportion of this value represented by the salvage contained in the bodies of the cars, together with the cost of fitting up bodies as bunk houses, shall be charged to road and equipment account No. 17, "Roadway buildings." If the houses are used by laborers engaged in construction work, their cost shall be included in the accounts in which also is included the labor of the men who use them, and when such work is completed the accounts thus charged shall be credited with the depreciated value of the bunk houses.

The value of the salvage in the trucks shall be charged to the appropriate material account.

CASE 41.

*Query.* Road A has a drawbridge over a bayou, for the operation of which it employs bridgemen, the expense being prorated among four railroads. How shall amounts received by A be credited?

*Answer.* If the bridge is in a yard, credit expense account No. 391, "Operating joint yards and terminals—Cr." if on road, credit expense account No. 413, "Operating joint tracks and facilities—Cr."

CASE 42.

*Query.* A carrier has an arrangement with other carriers whereby, for trackage rights within a certain district on its line, it receives as compensation a fixed allowance per car. This allowance is apportioned to joint maintenance, operating, and income accounts, the division being based upon estimates and available statistics for previous years.

What account shall be credited for an amount billed against one of these tenants for an accident damaging the carrier's tracks and some of the equipment of other carriers resting upon those tracks, and also an amount paid to one of the carrier's employees in settlement of a personal injury claim occasioned by such accident, the understanding being that the railroad causing the accident shall pay the expenses incident thereto, in addition to the amount it pays for trackage?

*Answer.* The carrier incurring the expenses, which under the contract belong solely to another carrier, shall, so far as practicable, charge the amounts of such expenses directly to account No. 715, "Miscellaneous accounts receivable," and credit pay roll, voucher, or material accounts, as the case may be.

The carrier responsible shall charge the expenses to its primary operating expense accounts other than joint facility accounts. (*See Cases 63, 66, and 132.*)

CASE 43.

*Query.* To what accounts shall interest paid on material bills be charged and cash and trade discounts be credited?

*Answer.* Interest shall be included in Income. All discount realized on bills for material purchased shall be credited to the account to which is charged the original invoice.

CASE 44.

*Query.* Amounts paid by Road A for hire of equipment used in joint-yard operations are prorated among three tenant lines upon basis of number of cars handled for each. How shall the payments and receipts be included in A's accounts?

*Answer.* They shall be included in the appropriate equipment rent accounts in Income.

CASE 45.

*Query.* Road A distributes the amount charged Road B upon a lump-sum basis for the joint use by B of A's terminal, as follows:

| | Per cent. |
|---|---|
| "Maintaining joint tracks, yards, and other facilities—Cr." | 10 |
| "Operating joint yards and terminals—Cr." | 25 |
| "Joint facility rent income" | 65 |

Is it proper to apportion any part of such charges to rent?

*Answer.* If A owns the property operated jointly, the amount in excess of the proportionate expense of maintenance and operation shall be included by each railroad in the joint facility rent accounts in Income.

CASE 46.

*Query.* Road B uses Road A's tracks between two points, paying therefor a rent based upon valuation and also a proportion of maintenance and operating expenses based upon wheelage.

(*a*) A pays B a per cent of the value of A's tickets honored on B's trains.

(*b*) B pays A a per cent of cash fares on B's trains between the two points.

(*c*) B pays A full local rate on tickets sold by B honored on A's trains.

How shall each road take the above items into its accounts?

*Answer.* The accounting shall be as follows:

(*a*) B shall credit full value of tickets to revenue account No. 102, "Passenger." The amount of this revenue less the amount paid by A to B shall be charged by B to income account No. 541, "Joint facility rents," and shall be credited by A to income account No. 508, "Joint facility rent income."

(*b*) B shall charge amount paid and A shall credit amount received to joint facility rent account in Income.

(*c*) A shall credit and B shall charge the full value of the tickets to revenue account No. 102, "Passenger."

CASE 47.

*Query.* To what account shall be credited the amount received by a carrier for the surrender of an unexpired lease for offices occupied by it?

*Answer.* It shall be credited to profit and loss account No. 607, "Miscellaneous credits."

CASE 48.

*Query.* Owing to certain freight yards of a carrier becoming congested it is found necessary to deliver cars at another point temporarily. The delivery involves special movements a distance of 1 to 3 miles. Shall the movements be included with freight-train miles or considered switching or yard movements of which no wheelage report would be made other than for the locomotive?

*Answer.* Mileage shall be considered merely as of switching or yard movements.

CASE 49.

*Query.* A lumber company's log train uses a carrier's line between its logging camp and mill. The equipment is owned by the lumber company and is operated by its employees, although, while on the carrier's line, the trains are under orders of the carrier's dispatcher. The carrier is compensated on a mileage basis. Shall this mileage be included in the carrier's statistics?

*Answer.* It shall not be so included.

CASE 50.

*Query.* May the distribution of the cost of fuel, stores, and other supplies for yard locomotives and for work-train service, be made upon the basis of the mileage of yard and work locomotives for the month preceding that in which the expense is incurred?

*Answer.* The distribution of each month's operating expenses shall be based upon the operation for that month.

CASE 51.

*Query.* On account of Road A owning no equipment, Road B supplies the necessary equipment and maintains and operates A's road. B charges A the cost of maintenance and operation, with exception of the maintenance of equipment and the cost of engine and train service. B receives all revenues and pays A agreed proportions of the revenues upon through traffic only. What is the correct accounting?

*Answer.* All revenue and expenses incident to the operation of A's road shall be included in B's accounts. All mileage statistics, including passenger, ton, train, car, locomotive, etc., shall be included in B's records and reports. The difference between the proportion of the revenue due to A and the proportion of operating expenses payable by A to B constitutes A's compensation for the use of its road and shall be charged by B to income account No. 542, "Rent for leased roads."

In case the result is a loss to A, the amount of the deficit shall be credited by B to account No. 542, "Rent for leased roads," and charged by A to account No. 509, "Income from lease of road." B shall include the cost of maintenance and operation in its primary operating expense accounts.

CASE 52.

*Query.* Road A operates its yard for the joint benefit of its own service and that of Road B. In an enginehouse at this point A's train locomotives, B's train locomotives, and the locomotives used in operating the joint yard are prepared. What is the correct accounting for the expense of preparing these locomotives in this enginehouse?

*Answer.* The expense of preparing the joint-yard locomotives shall be included by A in account No. 388, "Enginehouse expenses—Yard," and the amount of such expense chargeable to B shall be credited by A and charged by B to the appropriate account "Operating joint yards and terminals." A has the option of clearing the cost of preparing B's train locomotives through account No. 400, "Enginehouse expenses—Train," or of crediting the amount of such cost to its payroll and material accounts. A shall charge the cost of preparing its train locomotives to account No. 400, "Enginehouse expenses—Train," and B shall include in the same account the cost of preparing its train locomotives.

CASE 53.

*Query.* Road A cleans Road B's cars and supplies them with oil and gas for lighting, and with water, ice, and coal, and with oil and waste for lubrication, upon the basis of the actual cost of the labor and supplies. What is the proper accounting by each company for these expenses?

*Answer.* A shall distribute these expenses from its labor and material accounts directly against B. B shall charge its proportion of the expenses to the appropriate operating expense primary accounts other than joint facility accounts. (*See Case 161.*)

CASE 54.

*Query.* Road A operates one of its yards for the joint benefit of its own service and that of Road B. Each road furnishes its own coal, delivered in cars at this yard. The coal used by the locomotives at this point is handled through the coal bins owned by Road A, separate bins being provided for the coal used upon B's locomotives. The cost of operating this fuel station is apportioned by A between its own train service, B's train service, and the service of the joint yard (which is operated by A) upon the basis of quantity of coal supplied. The proportion charged to the joint yard is divided between the two railroads upon the basis used for division of other joint-yard expenses. How shall these fuel station expenses be treated in the accounts of the two companies?

*Answer.* A shall include the entire cost of the operation of the fuel station in an appropriate clearing account and shall clear such expenses through the following charges. The proportion of the cost of handling fuel for B's train locomotives shall be charged directly to B. The proportion of the cost of handling fuel assignable to A's train locomotive service shall be charged by A to account No. 394, "Fuel for train locomotives." The proportion of the cost of handling the fuel assignable to the joint-yard service shall be charged by A to account No. 392, "Fuel for yard locomotives." B shall charge the cost of handling the fuel for its train locomotives to account No. 394, "Fuel for train locomotives." A shall credit and B shall charge the appropriate accounts for operating joint yards and terminals, with B's proportion of the cost of handling the fuel used in the joint-yard service.

CASE 55.

*Query.* The contract between Road B and Road A under which B uses the terminals of A at Y provides for the furnishing from A's storehouse of certain materials and supplies (including materials and supplies for locomotive and train use) for use in the operation of B's line south of Y. A's storehouse is not included in the schedule as a joint structure. How shall the charges covering the materials and supplies be treated in the accounts?

*Answer.* The amounts charged B for materials and supplies shall be credited by A to the material and supplies account and charged by B to the appropriate primary expense accounts other than joint facility accounts.

CASE 56.

*Query.* A carrier operates two freight houses at a terminal and furnishes all the facilities and labor for handling merchandise shipments for tenant lines. It charges them for this service a rate per ton. To what account shall be credited the amounts collected?

*Answer.* The portion of the charges representing maintenance and operation shall be credited to the appropriate joint facility accounts in Operating Expenses; that portion representing payments for the use of capital and for taxes shall be credited to income account No. 508, "Joint facility rent income." (*See Case 23.*)

CASE 57.

*Query.* When is a road under construction required to commence keeping accounts for operating revenues and operating expenses?

*Answer.* Accounts of operating revenues and operating expenses shall be kept as soon as the road begins the operation of transportation service trains.

CASE 58.

*Query.* A carrier participates in the operation of a through dining-car line, the equipment of which is owned by another carrier. How shall its proportion of loss be handled?

*Answer.* Each carrier shall include its proportion of the revenues in account No. 131, "Dining and buffet," and its proportion of the expenses in the appropriate operating expense primary accounts other than joint facility accounts. The operating carrier shall credit the rents of equipment to account No. 505, "Rent from passenger-train cars," and the participating carrier shall charge them to account No. 538, "Rent for passenger-train cars."

CASE 59.

*Query.* In 1906 a carrier acquired and charged to equipment account a box car costing $640. This car was destroyed in 1910 upon a foreign line. The trucks were repaired and returned. The value of these trucks was $175. The carrier rendered bill against the foreign line for $344, this being the value under Master Car Builders' Association rules of the body of the car at the time it was destroyed. The carrier had charged $60 to Operating Expenses and credited the same amount to balance-sheet account No. 776, "Accrued depreciation—Equipment," to cover depreciation of the car from July 1, 1907, to the date of its retirement. The depreciation accruing previous to July 1, 1907, amounted to $20. What entries are necessary for a proper accounting for the retirement of this car?

*Answer.* The text of road and equipment general account II, Equipment, quite fully describes the proper accounting for equipment retired. The following statement of this particular case, in journal entry form, may prove an additional aid in determining the correct accounting:

| | | |
|---|---|---|
| No. 776, "Accrued depreciation—Equipment", (an amount equal to the amount previously credited thereto with respect to this car) | $60 | |
| No. 715, "Miscellaneous accounts receivable" (amount charged foreign line) | 344 | |
| No. 716, "Material and supplies" (value of trucks) | 175 | |
| No. 619, "Loss on retired road and equipment" (depreciation to July 1, 1907) | 20 | |
| No. 316, "Freight-train cars—Retirements" | 41 | |
| No. 53, "Freight-train cars" (cost of car) | | $640 |

CASE 60.

*Query.* To what account shall be charged the cost of options upon lands for terminals and approaches of a bridge, the plans for construction of which were postponed?

*Answer.* The amount paid for options on property which it was proposed to use in the construction of terminal and bridge-approach improvements shall be carried in a suspense account until the proper disposition has been finally determined. If, later, the plan is definitely abandoned, and the amount expended is lost, the loss sustained shall be charged to Profit and Loss.

CASE 61.

*Query.* To what account shall freight charges over the line owning tracks be credited when they are added to the cost of maintenance material charged against joint users of the tracks?

To what account shall be credited percentage added to joint-track bills for superintendence and store expenses?

*Answer.* Amounts included in joint facility bills representing freight charges shall be credited to revenue account No. 101, "Freight," and amounts representing superintendence and store expenses shall be credited by the operating company to Oper-

ating Expenses through the joint facility accounts. It is not intended that minor profits from percentages added to such bills shall be credited to the revenue accounts. (*See Cases 25 and 79.*)

CASE 62.

*Query.* A bridge was damaged by a wreck. Although it was possible to repair the bridge where it stood, the railroad management considered it economy to remove the bridge to the shops for repairs. Pending the repairs, a temporary pile structure was installed. To what account shall the cost of the temporary bridge be charged?

*Answer.* The cost (less salvage) of the temporary bridge shall be charged to expense account No. 208, "Bridges, trestles, and culverts."

CASE 63.

*Query.* Road B is responsible for the damage done by one of its locomotives to Road A's interlocking plant. This plant is a joint facility of the two railroads. In what account shall B include the expense of repairs?

*Answer.* The expense of such repairs shall be included in expense account No. 416, "Damage to property."

CASE 64.

*Query.* To what account shall be charged the pay of timekeepers engaged in construction work, and the cost of tents, bunks, and materials used by them?

*Answer.* Such expenditures shall be distributed to the cost of the specific work to which the timekeepers are assigned.

CASE 65.

*Query.* Two houses on carrier's right of way are occupied by roadway employees, rent free. Is it proper to credit an amount representing a fair rent for the houses to revenue account No. 142, "Rents of buildings and other property," and debit the repairs to expense account No. 229, "Roadway buildings"?

*Answer.* It is not intended that amounts which do not represent revenue actually earned shall be credited to the revenue accounts; neither is it intended that amounts which do not represent actual expenses shall be charged to the expense accounts. No credit shall be made to the revenue accounts for rent of houses on right of way occupied by employees, rent free. The cost of repairing the houses is a proper charge to expense account No. 229, "Roadway buildings."

CASE 66.

*Query.* Shall the distribution of extraordinary expenses for injuries to persons and damage to property, the result of casualties in connection with the operation of joint facilities, be made through the joint facility accounts or through the other primary accounts?

*Answer.* All such expenses incurred in the operation of joint facilities, in which the parties to the contracts for such operation jointly participate, shall be handled through the appropriate joint facility accounts. (*See Cases 42 and 132.*)

CASE 67.

*Query.* To what accounts shall bills be distributed when rendered against other companies for their proportions of wages of crossing flagmen stationed where there are no towers or gates?

*Answer.* If the crossing flagmen are employed at road crossings where the tracks of two or more companies are parallel and there are no tracks used jointly, the proportions billed against other companies shall be credited by the billing road to expense account No. 405, "Crossing protection," and taken up in the same account by the paying road. If, on the contrary, the flagmen are located at street or road crossings in joint yards, such bills shall be included in the account "Operating joint yards and termi-

nals," and if on joint tracks outside of yards, in the account "Operating joint tracks and facilities."

CASE 68.

*Query.* Road B runs its trains for a distance over Road A's tracks, paying a fixed rent per year for the privilege. These trains are operated by B's crews. Which road shall report the train-miles of B's trains while on A's tracks?

*Answer.* B shall include in its statistics the train-miles, car-miles, etc., for its trains operated on A's tracks.

CASE 69.

*Query.* In April, 1902, a carrier completed a spur track, the cost of which was charged to Operating Expenses. The larger part of the material used was second-hand. In December, 1908, the track was taken up and not replaced. In view of the fact that the cost of the track was included in operating expenses, shall not the salvage, if any, be charged to a material account and surplus credited with a similar amount?

*Answer.* The salvage shall be charged to a material account and Profit and Loss credited with a similar amount. Expenses incident to the retirement of the track shall be charged to Profit and Loss.

CASE 70.

*Query.* To what account shall a railroad credit rent received from a telephone company for joint use of its trolley poles?

*Answer.* Such rent shall be included in revenue account No. 142, "Rents of buildings and other property."

CASE 71.

*Query.* To what accounts shall a carrier credit the value of scrap which recently has been gathered and sold, and charge the cost of gathering same for sale? This scrap has been scattered along the road for years, and it is now impossible to say to what equipment or structures it originally belonged. It has never been carried in any material account.

*Answer.* The receipts from the sale of this scrap, less the cost of assorting it, shall be credited to material accounts and cleared from these accounts to Operating Expenses. The cost of gathering the scrap shall be charged to expense account No. 202, "Roadway maintenance."

CASE 72.

*Query.* At various terminals on a section of Road A's line, which is jointly operated with Road B, switching locomotives are furnished by B. How shall the compensation for the use of these locomotives, which includes rent and the cost of repairs, be accounted for?

*Answer.* The proportion of compensation which covers the cost of repairs to and depreciation of the locomotives shall be cleared through accounts "Maintaining joint equipment at terminals." The remainder, representing return on capital invested in the locomotives, shall be credited by B and charged by A to the appropriate locomotive rent accounts in Income.

CASE 73.

*Query.* Road A loans a locomotive and three coaches to Road B for excursion service, and charges B for trackage and wages of employees delivering the equipment. How shall these charges be treated?

*Answer.* The charge for trackage shall be credited to account No. 143, "Miscellaneous." The charge for wages of employees shall be credited to the pay roll account to which the wages of employees have been charged. The carrier has the option of clearing the wages through the appropriate operating expense accounts. (*See Case 174.*)

CASE 74.

*Query.* May the adjustment of material accounts to the basis of inventories be deferred to a period subsequent to the year in which the inventories are taken?

*Answer.* Such adjustments shall be made in the accounts of the year in which the inventories are taken. (*See Case 2.*)

CASE 75.

*Query.* A company handles logs and ores extensively and to get this freight is obliged to build temporary tracks into the woods and to the mines. Is it permissible, instead of charging the entire cost of these tracks to the road and equipment accounts, to charge the material, such as rails, angle bars, and switches, to these accounts, and to include in Operating Expenses the cost of the ties, bolts, and grading? In this way the irrecoverable portion of these tracks is disposed of during the time revenue from them is being received and not after the revenue is all in.

*Answer.* The entire first cost of the sidings and spur tracks shall be charged to the road and equipment accounts. The classifications permit the carrier to include the depreciation upon these tracks in operating expenses during the period they are in use.

CASE 76.

*Query.* How may a carrier make adjustment of the differences, due to insufficient charges for depreciation, between the value of equipment as carried in its property account and the actual value of the equipment as ascertained by an inventory appraisal?

*Answer.* If a carrier's equipment accounts prior to July 1, 1907 (the effective date of the depreciation accounts in Operating Expenses) show insufficient charges for depreciation, and a carrier elects to make an adjustment so that the property account Equipment shall in fact reflect the cost of equipment in service and the depreciation accounts reflect the full amount of depreciation accrued on such equipment from the beginning of its life, such adjustment for depreciation prior to July 1, 1907, shall be made through Profit and Loss.

Advice as to the proper disposition of differences due to insufficient charges for depreciation after July 1, 1907, will be given by the Commission upon receipt of particulars of such discrepancies.

CASE 77.

*Query.* Road B, as agent for Road A, furnishes the necessary equipment and operates passenger trains a distance over Road A's tracks. A pays B a rate per train-mile for the service and receives all local revenue and proportion of revenue for through traffic in trains while on these tracks. What is the proper accounting for these revenues and expenses?

*Answer.* Road A shall credit the revenue of the trains to the primary revenue accounts under Transportation and shall report all passenger and mileage statistics of the trains.

The amount paid for the train service shall be divided, upon a basis agreed to between the two roads, into two parts; one part, representing the rent of the equipment, shall be included by each road in the appropriate equipment rent accounts in Income, the other part, representing the expenses of operation, shall be charged by A under general accounts Maintenance of Equipment and Transportation to the primary accounts other than joint facility accounts, and shall be credited by B to the same accounts.

CASE 78.

*Query.* A railroad is constructed at a cost equal to the amount realized from the proceeds of a bond issue. Capital stock is issued gratuitously to stockholders. What entries shall be made in the balance-sheet accounts on account of the issue of this stock?

*Answer.* The par value of the stock issued shall be credited to account No. 751, "Capital stock," and shall be debited to accounts covering discount and premium on capital stock. The cost of road and equipment as stated in the property investment accounts shall be their actual net cost in cash.

CASE 79.

*Query.* A carrier realized a profit of $2,000 in one month upon coal which it furnished, under a temporary arrangement, to another carrier. If this profit is credited as provided in Case 25, it will unduly distort its operating expenses. In what account shall the profit be included?

*Answer.* Case 25 has reference to small profits arising from work done or supplies furnished under conditions which make it difficult to separate costs and profits.

In the case mentioned, the profit arising shall be credited to revenue account No. 143, "Miscellaneous." In arriving at the profit, proper allowance shall be made to cover transportation charges. (*See Cases 25 and 61.*)

CASE 80.

*Query.* A road sells notes because the money market does not warrant the sale of bonds, which are deposited as collateral for the notes. Is it permissible to spread the discount on the notes over the life of the bonds, treating the sale and retirement of both notes and bonds as one transaction?

*Answer.* The sale and retirement of the notes shall be separately accounted for, and the discount suffered shall be treated as provided in account No. 547, "Interest on unfunded debt," if the notes are for a term not exceeding one year. If for a longer term, the discount shall be included in account No. 725, "Discount on funded debt" and extinguished during the life of the notes.

CASE 81.

*Query.* To what account shall be charged a contribution to cover the deficit of a "Chautauqua"? This contribution was guaranteed for the purpose of securing traffic.

*Answer.* The amount shall be charged to account No. 353, "Advertising."

CASE 82.

*Query.* A bridge company owns, maintains, operates, and pays the taxes upon a bridge over which a single railroad, in consideration of a fixed annual rent, enjoys the right to operate its trains. In what accounts shall this rent be included?

*Answer.* The bridge company shall credit the rent to income account No. 509, "Income from lease of road"; shall charge the cost of maintaining and operating the bridge to the same account; and shall charge the taxes to account No. 532, "Railway tax accruals."

The railroad shall charge the proportion of the rent representing the expenses of maintenance and operation to the appropriate operating expense primary accounts, and the remainder to income account No. 542, "Rent for leased roads." As this is the only railroad operating trains over the bridge, it is not a joint facility.

CASE 83.

*Query.* County scrip, which will be accepted at face value in payment of taxes, is purchased at a discount. How shall it be carried in the balance sheet, and in what accounts shall the profit be included when the scrip is used?

*Answer.* The scrip shall be carried at cost. When it is used in the payment of taxes the profit shall be credited to profit and loss account No. 607, "Miscellaneous credits."

CASE 84.

*Query.* At certain points on the border freight-train cars are held by the custom-house authorities a considerable length of time. Is the per diem accrued during the detention of the cars chargeable to equipment rent account or to transportation expense account No. 411, "Other expenses"?

*Answer.* The per diem charges assessed in accordance with the per diem rules of the carrier shall be charged to income account "Hire of freight cars."

CASE 85.

*Query.* To what account shall be charged the expense of cleaning the exterior of sleeping and dining cars?

*Answer.* The cost of exterior cleaning of such cars shall be charged to expense account No. 402, "Train supplies and expenses."

CASE 86.

*Query.* Through error a duplicate refund was made of an overcharge, and the amount was determined to be irrecoverable. To what account shall be charged the duplicate refund?

*Answer.* The amount of the duplicate refund, when discovered, shall be credited to the account previously charged, and when found to be irrecoverable shall be charged to account No. 533, "Uncollectible railway revenues." This case shall not be construed to relieve the carrier from its responsibility for collecting and retaining the lawfully established charges.

CASE 87.

*Query.* To what account shall be credited amounts received from anonymous sources which are ordinarily designated as "Conscience money"?

*Answer.* Unless the remittances indicate that the payments are assignable to the revenue, expense, or income accounts, such payments shall be credited to account No. 607, "Miscellaneous credits."

CASE 88.

*Query.* To what account shall be charged witness fees in a suit for damages growing out of the false arrest of a person suspected of setting fire to a shop building of a carrier; also, to what account shall be charged the judgment, if any, secured in such a suit?

*Answer.* Both fees and judgment shall be charged to expense account No. 277, "Other expenses."

CASE 89.

*Query.* Recently a carrier's shops and some equipment were burned. After deducting insurance there remains a loss on both shops and equipment. Is it proper to charge the loss on the building to Profit and Loss?

*Answer.* The cost of the shops shall be credited to the appropriate road and equipment accounts. If it is intended to replace the burned property, its cost, less insurance and depreciation accrued, if any, and salvage recovered, shall be charged to the appropriate operating expense accounts. If the shops are not to be rebuilt, the cost, less insurance and depreciation accrued, if any, and salvage recovered, shall be charged to profit and loss account No. 619, "Loss on retired road and equipment." The loss on equipment shall be handled in accordance with the provisions in the text of road and equipment general account II, Equipment.

CASE 90.

*Query.* To what account shall be charged penalties paid to public authorities for violation of the 28-hour stock law?

*Answer.* They shall be charged to profit and loss account No. 621, "Miscellaneous debits." (*See Cases 37 and 38.*)

CASE 91.

*Query.* A carrier frequently pays charges for cleaning its ice houses. Shall the expense be charged to "Train supplies and expenses," or shall it be divided between that account and "Station employees"?

*Answer.* The cost of cleaning ice houses is considered a part of the cost of storing. It shall be added to the cost of the ice and, with the latter, apportioned to the accounts to which the ice is charged.

CASE 92.

*Query.* Railway A rents a portion of its tracks to Railway C at a flat rate per annum, the amount of which is credited to rent, maintenance, and operation. This track is a part of that operated jointly by A and B. Under the contract for the joint operation, B is entitled to its proportion of the amounts received by A from C. What is the proper distribution of the amount paid by A to B as its share of the amounts collected from C?

*Answer.* The amount paid by C to A shall be divided into two parts; one representing maintenance and operation; the other, rent. The first part shall be credited by A to its appropriate joint facility operating expense accounts and the other to the joint facility rent account under Income. The proportion of these credits which is allowed in settlement with B shall be deducted from B's proportion of the charge for rent, maintenance, and operation of the whole joint facility, and the remainder, which is collected from B, shall be credited by A to its appropriate joint facility operating expense accounts and joint facility rent account under Income.

CASE 93.

*Query.* There is a connecting line between the tracks of the A company and those of the B company, each company owning the one-half of the track next to its own line. The two companies alternate in performing the interchange switching over this track in periods of six months, rendering bills alternately for proportions of service performed. How shall the payments be charged and credited?

*Answer.* It is assumed that the bills for the service performed cover the cost of switching service only. The amounts of such charges shall be included in the appropriate operating expense primary accounts other than joint facility accounts. If the charges for hire of equipment are included in these bills, such charges shall be included by both companies in the appropriate equipment rent account in Income.

CASE 94.

*Query.* A carrier has a joint facility arrangement with another carrier which does not report to the Commission. Shall it handle through its joint facility accounts the amounts received for the use of these facilities?

*Answer.* It shall. Amounts received from a carrier, whether it reports to the Commission or not, for the joint use of property operated by a carrier reporting to the Commission, shall be divided by the operating carrier into two parts. One, representing the cost of maintenance and operation, shall be credited by the operating carrier to the joint facility expense accounts affected; the other shall be credited to income account No. 508, "Joint facility rent income." In case the facilities used jointly are of minor importance, and the amounts received for the use of them are small, the credits shall be to revenue account No. 142, "Rents of buildings and other property."

CASE 95.

*Query.* A terminal company has a contract with four railroads which jointly own its capital stock, under which it handles all freight and passenger business over its terminals for these companies. These railroads reimburse the terminal company for all expenses of operation, interest on the bonds, and other fixed charges of the terminal company and, in addition, pay a small percentage on first-mortgage bonds to be used as a sinking fund for retiring the bonds. How shall these various payments be treated in the terminal company's accounts?

*Answer.* The switching or terminal company shall include the expenses of operation in its primary expense accounts and shall credit the charges pertaining to the joint benefit service to the appropriate joint facility expense accounts. It shall include the interest on bonds, other fixed charges, and contributions to its sinking fund in income account No. 508, "Joint facility rent income."

CASE 96.

*Query.* A locomotive assigned to yard switching service is taken to the shops a number of miles distant for repairs and is relieved by a locomotive from the shops. To what account shall be charged the expense of running the relief locomotive from the shops to the point where it is to be put in service? How shall the mileage of the locomotives be classified?

*Answer.* The expenses shall be charged to the proper yard accounts under Transportation—Rail line. The mileage of the locomotives shall be classed as yard switching locomotive-miles.

CASE 97.

*Query.* A and B are 10 miles apart, and the freight destined to B passes through A. The freight trains are divided in the yard at A, and through freight destined to B is taken to B by a transfer crew. The line between A and B is a part of the carrier's main line. Shall the service of the transfer crew between these points be considered train service or yard service?

*Answer.* It shall be considered train service and the expenses and the statistics of train-miles, locomotive-miles, car-miles, etc., shall be treated accordingly. (*See Case 7.*)

CASE 98.

*Query.* To what account shall a carrier charge commissions paid to brokers for the purchase of the securities of other companies?

*Answer.* The amount of such commissions shall be considered as a part of the cost of the securities purchased.

CASE 99.

*Query.* A carrier obtains a franchise which permits it to operate with steam motive power within the limits of a city for a period of 20 years. To what account shall the cost of this franchise be charged?

*Answer.* The cost shall be included in a convenient suspense account under balance-sheet account No. 727, "Other unadjusted debits," and amortized during the life of the franchise through equal annual charges to income account No. 551, "Miscellaneous income charges."

CASE 100.

*Query.* In the construction of undergrade and overhead highway crossings a carrier purchases sufficient land for slopes outside of its right of way instead of building retaining walls. To what account shall the cost of this land be charged?

*Answer.* It shall be charged to road and equipment account No. 2, "Land for transportation purposes." (*See Case 186.*)

CASE 101.

*Query.* In connection with the construction of an extension to its line a carrier relocates a short section of an electric road's tracks for the purpose of avoiding grade crossings. To what account shall the cost of the work be charged?

*Answer* It shall be charged to road and equipment account No. 2, "Land for transportation purposes."

CASE 102.

*Query.* A carrier sells to another carrier an undivided third interest in a part of its line. How shall the proceeds of the sale be credited?

*Answer.* One-third of the ledger cost of the line shall be credited to the primary road and equipment accounts to which the property had previously been charged. The difference between the total amount thus credited and the amount received for the proportion sold shall be included in Profit and Loss.

CASE 103.

*Query.* A carrier company sells a part of its line. To what account shall be credited a lump sum received for the property?

*Answer.* The primary road and equipment accounts shall be credited with amounts equal to the net amounts previously charged thereto with respect to the property sold. The difference between the total amount thus credited and the amount received shall be included in Profit and Loss.

CASE 104.

*Query.* Real estate purchased in the names of individuals is used by a carrier as right of way and for other operating purposes. How shall its cost be accounted for?

*Answer.* Under the assumption that the individuals in whose names the property has been purchased are in fact the agents of the carrier, the cost of the real estate shall be included in the carrier's property investment accounts.

CASE 105.

*Query.* On account of its line crossing a stream at a point on a section line a railroad purchases land for the purpose of constructing a county road at one side of the section line at this point, thus permitting separate bridges to be built for use of the railroad and the highway. The title of the land purchased is conveyed to the county, while the county surrenders its title to that portion of the land upon which the railway is constructed and which was originally occupied by the highway. To what account shall the cost of the land be charged?

*Answer.* It shall be charged to road and equipment account No. 2, "Land for transportation purposes."

CASE 106.

*Query.* To what account shall be credited amounts collected from contractors as penalties for failure to complete the construction of a portion of a line at a specified time?

*Answer.* Such forfeiture shall be considered as an abatement in the cost of the work covered in the contract and shall be credited to the account to which the cost of the work is charged.

CASE 107.

*Query.* To what account shall the cost of the equipment of cabooses with telegraphones be charged; also the cost of repairs of these instruments? They are for use in case of accident or trouble upon the line.

*Answer.* The cost of the installation as an initial equipment shall be charged to road and equipment account No. 26, "Telegraph and telephone lines," and the cost of maintenance to expense account No. 247, "Telegraph and telephone lines."

CASE 108.

*Query.* In the construction of new freight cars some second-hand material is used. At what prices shall this material be included in the cost of the new equipment?

*Answer.* The prices of the second-hand material shall be determined by deducting fair allowances for depreciation from the current prices of the material as new.

CASE 109.

*Query.* Under the provisions of the forfeiture clause in a lease a carrier secured title to a building which had been erected by the lessee upon the carrier's property at a cost of $3,000. At the time of the foreclosure the lessee owed $300 for rent. Shall the charges to the carrier's property account to cover the building be based upon the original cost or upon the amount of the rent due?

*Answer.* The charge to the property account shall be based upon the actual cost of the property to the carrier.

CASE 110.

*Query.* A wrecking crane, which was being used in removing old piles in connection with the repairs and additions and betterments to a wharf, fell through the wharf. The engineer of the crane was injured. To what account shall be charged the payments on account of these injuries?

*Answer.* The accident having occurred in connection with the removal of the old structure as a preliminary to the construction of improved wharf facilities, the payments shall be charged to expense account No. 274, "Injuries to persons."

CASE 111.

*Query.* In connection with the application of an improved device to equipment, to what account shall be charged the cost of removing the old and of applying the new device?

*Answer.* The cost of removing the old and of applying the new device shall be charged to the appropriate repair account.

CASE 112.

*Query.* To what account shall be charged the cost of a motor applied to a locomotive turntable?

*Answer.* The cost shall be charged to road and equipment account No. 20, "Shops and enginehouses." The cost of the motor removed, if any, shall be credited to the same account.

CASE 113.

*Query.* In the division of through passenger rates between Road A and Road B, Road B was allowed an arbitrary per passenger for ferry service at its terminal. Subsequently the ferry service was extended and improved, and Road B was then allowed, in addition to the arbitrary, a stated amount per year, irrespective of the number of passengers. To what accounts shall the additional payments be debited and credited by A and B, respectively?

*Answer.* They shall be debited and credited to the accounts to which the payments based upon the arbitrary per passenger are debited and credited.

CASE 114.

*Query.* A terminal railway company has no station agents, its station service being performed by the superintendent of transportation and his clerks. To what account shall the pay of these employees while thus engaged be charged?

*Answer.* To expense account No. 373, "Station employees."

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CASE 115.

*Query.* At a joint terminal the lading of cars is transferred on account of t being in bad order. The cost of the work is charged against the road respons the condition of the cars. In what account shall be included the amount charges?

*Answer.* It shall be charged to expense account No. 373, "Station empl Under the conditions stated this is not a joint facility expense.

CASE 116.

*Query.* A railroad which does not permit its own equipment to leave i receives freight cars from one connection on a per diem basis and from another demurrage basis. Shall the amounts paid as demurrage be charged as hire of ment?

*Answer.* They shall be so charged.

CASE 117.

*Query.* The fuel used by a carrier is transported upon the basis of throug from mines located upon a foreign line. To what account shall be credited rier's proportion of the through rate on this material?

*Answer.* If the freight charges on the fuel upon the basis of through rate are to the carrier's fuel account, the carrier's proportion of the freight charges s credited to the same account.

CASE 118.

*Query.* A large part of the freight-car equipment used by a carrier in its ope is held under a lease from the industrial owner. To what account shall be amounts paid to the owner of the equipment? These payments represent r depreciation.

*Answer.* The rent shall be charged to income account, "Hire of freight cars the depreciation charged to expense account No. 315, "Freight-train cars— ciation."

CASE 119.

*Query.* A dining-car waiter left his car when a stop was made on account of ing accident. In attempting to reenter the train he fell and was injured. Sh expenses on account of such injuries be included in the accounts for rail ope or in those for miscellaneous operations?

*Answer.* They shall be charged to rail operating expense account No. 420, "I to persons." (*See Case 19.*)

CASE 120.

*Query.* To what account shall be charged a carrier's expenses on account ciations of transportation and car accounting officers?

*Answer.* They shall be charged to the accounts which are charged with the of the officers who represent the carrier as members of the associations.

CASE 121.

*Query.* To what account shall be charged the cost of running a special train purpose of promoting industries along a carrier's lines?

*Answer.* It shall be charged to expense account No. 356, "Industrial and gratica bureaus."

CASE 122.

*Query.* Is it permissible to charge to expense account No. 372, "Dispatching a portion of the salaries of telegraph operators who are located in towers and w dentally receive and deliver train orders?

*Answer.* It is not. No charges shall be made to this account for incidental in receiving and delivering train orders.

CASE 123.

*Query.* Is it proper to credit income account "Hire of freight cars," and to charge Operating Expenses upon a per diem basis for the rent of cars used in transporting company fuel used for operating purposes?

*Answer.* No charges shall be made to Operating Expenses for the rent of cars used in transporting company fuel.

CASE 124.

*Query.* The fuel used by a carrier in its operations is delivered to its line by schooner. At the point of delivery it is unloaded into bins. From these bins it is loaded and transferred to other bins along the line and as needed is removed to coal chutes. Is the cost of the coal delivered to the line properly considered the cost of the fuel, or shall the cost of handling and transporting over the carrier's line be included?

*Answer.* The cost of the fuel shall include its cost delivered to the carrier plus the handling (loading and unloading) expenses up to and including delivery at the chutes. No charges for transportation over the carrier's own line shall be included.

CASE 125.

*Query.* To what account shall be charged the expenses connected with gathering and replacing on the tracks freight equipment wrecked by an extensive flood caused by the bursting of an industrial company's dam?

*Answer.* They shall be charged to expense account No. 415, "Clearing wrecks."

CASE 126.

*Query.* To what account shall be charged the expenses of the cold storage of freight which can not be delivered at the time it is unloaded?

*Answer.* The carrier's expenses on account of such storage shall be charged to expense account No. 376, "Station supplies and expenses."

CASE 127.

*Query.* An agent received a summons garnishing the wages of an employee. On account of delay incident to notifying the legal department the employee succeeded in drawing his pay. The carrier was obliged to make good the amount of the claim. To what account shall the loss be charged?

*Answer.* The loss shall be charged to expense account No. 460, "Other expenses."

CASE 128.

*Query.* To what account shall be charged the cost of foundry patterns?

*Answer.* It shall be charged to the accounts to which is chargeable the cost of the castings manufactured from the patterns.

CASE 129.

*Query.* A storehouse containing maintenance-of-equipment material is destroyed by fire. To what account shall be charged the loss of the material?

*Answer.* If the net loss is relatively small, it shall be distributed to the account to which the material would have been charged had the fire not occurred. If the loss is so large that its inclusion in the maintenance-of-equipment accounts would impair the significance of the statistics prepared from such accounts, the loss shall be included in account No. 621, "Miscellaneous debits."

CASE 130.

*Query.* A carrier pays the salaries of the employees and all other expenses of a joint outside ticket agency, and charges each tenant company for a proportion of these expenses, based upon the ticket sales. In what accounts shall these charges be included?

*Answer.* Carriers have the option, according to their convenience in accounting, of crediting the proportions of the expenses of joint traffic offices charged to other carriers directly to their pay roll and voucher accounts, or of including all charges on account of service in the primary operating expense accounts and crediting foreign lines' proportions to the same accounts. Joint traffic expenses are usually readily assignable to the primary accounts, and joint facility traffic accounts are therefore deemed to be unnecessary.

CASE 131.

*Query.* To what account shall be charged the cost of twist drills, taps, dies, etc., used in general machine work, when for the replacement of worn-out tools?

*Answer.* If such articles are for use as appurtenances of power machine tools, their cost shall be charged to expense account No. 302, "Shop machinery." If they are for use as hand tool equipment, they shall be charged to clearing account "Shop expenses."

CASE 132.

*Query.* The equipment used for the operation of a joint terminal is damaged, one of the carriers using the terminal being responsible for the repairs as the damage occurred through the fault of its employees. How shall the terminal company, which makes the repairs, clear the cost of the work in its accounts?

*Answer.* The cost shall be credited directly to the payroll and material accounts, or cleared through the appropriate primary accounts for repairs of equipment. This is not a joint facility item. (*See Cases 42 and 66.*)

CASE 133.

*Query.* To what account shall be charged the cost of oil used in lubricating air-brake cylinders on cars?

*Answer.* It shall be charged to expense account No. 402, "Train supplies and expenses."

CASE 134.

*Query.* To what account shall be charged the cost of preparing and recording an agreement with another carrier covering trackage rights?

*Answer.* Specific fees paid to attorneys for such services shall be charged to expense account No. 454, "Law expenses." It is not intended that charges shall be made to this account for the incidental services of officers whose pay is regularly chargeable to other accounts.

CASE 135.

*Query.* Locomotives are leased to a lumber company, the lessor furnishing fuel and other supplies for the locomotives and the lessee paying a lump sum for the supplies and for use of the equipment. To what account shall be credited the amount received?

*Answer.* They shall be equitably apportioned between account No. 504, "Rent from locomotives," and the accounts originally charged with the cost of the supplies. (See section 2 of the general instructions for the Classification of Income, Profit and Loss, and General Balance Sheet Accounts.)

CASE 136.

*Query.* When land is rented in connection with addition and betterment projects, pending an actual purchase of the property, is the amount of such rent properly chargeable to the cost of additions and betterments? To what account shall be credited rents received from subtenants of such property?

*Answer.* Provided the primary object in the renting of property is to facilitate the addition and betterment work and the property is actually purchased for addition and betterment purposes, the rents paid shall be included in the road and equipment accounts, and the rents received credited to the same accounts.

CASE 137.

*Query.* The coupons on certain equipment-trust obligations contain a stipulation that if not paid on date of maturity the coupons shall bear interest from that date. To what account shall the interest on the coupons be charged?

*Answer.* It shall be charged to income account No. 547, "Interest on unfunded debt."

CASE 138.

*Query.* The expenses of a State railway commission are borne by the railways, the apportionment among them being based partly on net earnings and partly on mileage. To what accounts shall be charged a carrier's proportion of such expenses?

*Answer.* It shall be charged to income account No. 532, "Railway tax accruals."

CASE 139.

*Query.* A company acquires the exclusive use of tracks for a term of 10 years, paying a fixed rate per car and in addition advancing funds to the lessor for the construction of spur tracks, which are the property of the lessor. It is provided that in case of the termination of the lease before the completion of the full term, the lessor will refund to the lessee the amount advanced, less 10 per cent per annum from the date of the lease. What is the proper accounting for the advances for construction?

*Answer.* The lessee shall carry the advances in account No. 706, "Investments in affiliated companies," or in account No. 722, "Other deferred assets," as may be appropriate, charging one-tenth of the sum to Income each year as rents paid for lease of track. The lessor shall correspondingly credit the advances to account No. 757, "Nonnegotiable debt to affiliated companies," or to account No. 770, "Other deferred liabilities," as may be appropriate, crediting one-tenth of the sum to Income each year as rents received.

CASE 140.

*Query.* In what account shall be included a carrier's investment in tableware and tables, silverware, linen, and kitchen utensils in dining cars?

*Answer.* In account No. 54, "Passenger-train cars." (*See Case 164.*)

CASE 141.

*Query.* What is the correct accounting for the cost of adding, calculating, and typewriting machines purchased by a road during its construction period?

*Answer.* The cost when purchased shall be charged to account No. 74, "Stationery and printing;" and if the machines are retained for use during the operating period the residual value of the property shall be credited to this account and charged to the property accounts to which is chargeable the cost of the buildings of the class in which the machines are used.

CASE 142.

*Query.* To what account shall be charged a carrier's investment in an experimental farm which is conducted for the purpose of increasing traffic?

*Answer.* The cost of lands shall be charged to account No. 2, "Land for transportation purposes," and cost of buildings to account No. 35, "Miscellaneous structures."

CASE 143.

*Query.* A carrier includes in the price of material sold by it the tariff charges for transportation over its line. To what account shall these charges be credited?

*Answer.* To account No. 101, "Freight."

CASE 144.

*Query.* To what account shall be credited the revenue derived from the transportation of packages, articles, etc., other than milk, on passenger trains?

*Answer.* If the rates charged for the transportation service are applicable only when the property is transported incident to transportation of passengers and the weight of the property is included in the determination of excess weight of baggage over free allowance, the credit shall be to account No. 103, "Excess baggage." Otherwise the revenue shall be credited to account No. 101, "Freight," if based upon freight tariffs, and to account No. 108, "Other passenger-train," when on other bases.

CASE 145.

*Query.* In what account shall be included the pay and traveling, office, and other expenses of officers, claim adjusters, clerks, and attendants who constitute the organizations for the handling of claim matters, including personal injury, loss and damage, overcharge, live stock, and damage to property claims?

*Answer.* These expenses shall be charged to accounts Nos. 451, 452, 453, or 458, as may be appropriate.

CASE 146.

*Query.* A carrier operates regularly over its line a train for the transportation of passengers. It receives for the transportation of through passengers a rate per train-mile from connecting lines. It concurs in the tariffs under which through passengers are transported, but does not share in the prorate of the revenue therefrom. What is the proper accounting for the amount thus received from the connecting lines?

*Answer.* The carrier shall include the statistics for such transportation in its own accounts, and shall credit the amount received to revenue account No. 102, "Passenger." The connecting lines shall correspondingly charge their respective proportions of the payments to the same account.

CASE 147.

*Query.* To what account shall be credited the revenue derived from the weighing of cars at tariff rates? The service performed is principally switching service. The expense of recording the weights of the cars is relatively small.

*Answer.* To account No. 143, "Miscellaneous."

CASE 148.

*Query.* When lighterage service is provided for under the tariff rate under which freight moves over the carrier's rail line, shall any revenue from the lighterage be credited to the water-transfer revenue accounts?

*Answer.* No. The revenue accounts for water transfers are intended to include merely revenue upon the basis of tariff rates covering only water-transfer service.

CASE 149.

*Query.* A carrier leases a part of the railroad which it operates. To what account shall be credited the rent received for the exclusive use of a dwelling house located upon the right of way of the leased line?

*Answer.* To account No. 510, "Miscellaneous rent income."

CASE 150.

*Query.* A carrier rents a part of its terminal station for use as a warehouse and furnishes electrical power for use of the tenant. To what account should be credited the compensation received?

*Answer.* If the compensation received is not based on distinct charges for rent of the facility and for the power furnished, and the quantity of power furnished is relatively small, the credit shall be to account No. 142, "Rents of buildings and other property." Only the proportion assignable as rent otherwise shall be credited in this account and the remainder shall be credited to account No. 141, "Power."

CASE 151.

*Query.* A carrier operates restaurant, billiard and pool, bathing, and barber service for the benefit of its employees. In what accounts shall the revenues and the expenses of the service be included?

*Answer.* The revenues shall be included in account No. 132, "Hotel and restaurant," and the expenses in account No. 442, "Hotels and restaurants."

CASE 152.

*Query.* To what account shall be credited the revenue derived under specific tariff rates for heating cars containing vegetable shipments?

*Answer.* To account No. 143, "Miscellaneous."

CASE 153.

*Query.* In what accounts shall be included the revenues and expenses of stock pens at stations, maintained for the feeding, watering, and resting of stock in transit, as required by law?

*Answer.* The revenue shall be credited to account No. 143, "Miscellaneous"; the expenses of maintenance shall be charged to account No. 227, "Station and office buildings"; and the expenses of operation shall be charged as may be appropriate to account No. 373, "Station employees," or to account No. 376, "Station supplies and expenses."

CASE 154.

*Query.* To what account shall be credited the revenue, derived under specific tariff rates, from transferring freight from narrow to standard gauge cars?

*Answer.* To account No. 143, "Miscellaneous."

CASE 155.

*Query.* What is the correct accounting for the revenues and expenses of coal wharves used for transferring coal from cars to boats, the revenue being derived from operations such as lifting coal from vessels, placing coal in cars, placing coal on wharves for storage and later loading into cars, and from charges for storage on wharves? This revenue is based upon specific charges. The service is not provided for in the tariff rates for the transportation of coal.

*Answer.* The revenue derived from storage shall be included in account No. 135, "Storage—Freight," and the remainder shall be included in account No. 143, "Miscellaneous." The cost of maintaining the wharves shall be included in account No. 243, "Coal and ore wharves," and the expense of operating them shall be included in account No. 375, "Coal and ore wharves."

CASE 156.

*Query.* A steam railroad company operates a street car line. What is the correct accounting for the revenues and expenses of the service?

*Answer.* The revenues from transportation service shall be included in the appropriate primary accounts under general account I, Transportation—Rail Line; the incidental revenue in the primary accounts under general account III, Incidental.

The expenses of operation shall be included in the appropriate primary accounts under general accounts I, Maintenance of Way and Structures; II, Maintenance of Equipment; III, Traffic; IV, Transportation—Rail Line; and VII, General.

If the carrier desires to determine the revenues and expenses of the specific operation, subprimary accounts may be set up in accordance with the order promulgating the Classification of Operating Revenues and Operating Expenses.

CASE 157.

*Query.* To what account shall be charged the cost of repainting switch stands and repairing bumping posts?

*Answer.* To account No. 216, "Other track material."

CASE 158.

*Query.* Road A maintains and operates a water station. Water is supplied from this station to A's train locomotives and to the train locomotives of Road B. B operates jointly with A a portion of A's tracks, and reimburses A upon a train-mile basis for a portion of the cost of maintaining and operating the water station. What is the correct accounting for the expenses of maintaining and operating this station?

*Answer.* A shall charge the entire cost of maintenance to account No. 231, "Water stations." The portion of the maintenance expenses borne by B shall be included in the accounts for maintaining joint tracks, yards, and other facilities. Each road shall charge its proportion of the expenses of operating the station to account No. 397, "Water for train locomotives." A has the option of including the total expense of operation in a clearing account or of clearing B's proportion of the expenses of operation through account No. 397, "Water for train locomotives."

CASE 159.

*Query.* To what account shall be charged expenses on account of personal injuries which a storehouse employee suffered while engaged in unloading a carload of lumber?

*Answer.* In case the lumber which was being unloaded was for maintenance of way and structures, the expense shall be charged to account No. 274, "Injuries to persons"; if for maintenance of equipment, the charge shall be to account No. 332, "Injuries to persons"; if for temporary grain doors, dunnage boards, sugar strips, etc., charge to account No. 420, "Injuries to persons."

CASE 160.

*Query.* To what account shall be charged insurance premiums and taxes on storehouse material stock?

*Answer.* Premiums for insuring maintenance-of-way material stock shall be included in account No. 275, "Insurance," and those for maintenance-of-equipment material stock to account No. 333, "Insurance." In case the premiums are for insuring general store material stock which is designed both for maintenance of way and structures and for maintenance of equipment the premium shall be equitably apportioned between the above-mentioned accounts. Taxes upon store material stock shall be included in account No. 532, "Railway tax accruals."

CASE 161.

*Query.* To what accounts shall be credited amounts received by a carrier for cleaning and oiling the passenger cars of a tenant company?

*Answer.* To the accounts to which were originally charged the cost of the labor expended and the material consumed in the work. (*See Case 53.*)

CASE 162.

*Query.* The amount received by a carrier in settlement under Master Car Builders' Association rules for one of its cars which was destroyed upon a foreign line was in excess of the original cost of the car. To what account shall the profit be credited?

*Answer.* To the appropriate equipment retirement account.

CASE 163.

*Query.* To what account shall be charged the wages of timekeepers who keep the time of shop employees and make up shop pay rolls and miscellaneous statements in connection therewith?

*Answer.* To account No. 301, "Superintendence."

CASE 164.

*Query.* To what account shall be charged the cost of repairs and renewals of tableware, silverware, linen, and kitchen utensils in dining cars?

*Answer.* To account No. 317, "Passenger-train cars—Repairs." (*See Case 140.*)

CASE 165.

*Query.* When ice, water, fuel, and lubricating material are supplied to sleeping cars which operate over a carrier's line and the cost of the material is borne by the carrier, to what account shall be charged the expense?

*Answer.* To account No. 402, "Train supplies and expenses."

CASE 166.

*Query.* To what account shall be charged a station agent's shortage in excess of the surety bond?

*Answer.* To account No. 411, "Other expenses."

CASE 167.

*Query.* It is provided in account No. 388, "Enginehouse expenses—Yard," that in this account shall be included the expense of calling yard enginemen. Shall the expense of calling train enginemen be included in account No. 400, "Enginehouse expenses—Train"?

*Answer.* It shall be so included.

CASE 168.

*Query.* In what account shall be included the cost of renewing equipment such as tableware, table linen, kitchen utensils, and bedding, and cost of repairing furniture in hotels and restaurants the revenue from which is includible in account No. 132, "Hotel and restaurant"?

*Answer.* Such expenses shall be considered, as heretofore, running expenses, and shall be charged to account No. 442, "Hotels and restaurants."

CASE 169.

*Query.* To what accounts shall be charged plaintiff's court costs and also the carrier's own court costs in connection with personal injury cases, when such expenses are borne by the carrier?

*Answer.* The plaintiff's court costs shall be charged to the appropriate accounts for injuries to persons. The carrier's court costs shall be charged to account No. 454, "Law expenses."

CASE 170.

*Query.* To what account shall be charged fees to physicians for the physical exam nation of (*a*) employees, and (*b*) applicants for employment?

*Answer.* (*a*) To the account to which the pay of the employee is chargeable, exce when otherwise provided; (*b*) to the account to which the pay of the applicant wou be chargeable if employed, except when otherwise provided.

CASE 171.

*Query.* When such costs are borne by the carriers, to what account shall be charg the cost of internal-revenue stamps required under the act entitled "An act to increa the internal revenue and for other purposes," approved on October 22, 1914?

*Answer.* The cost of such stamps for use in connection with operation shall be co sidered as taxes. When required in connection with construction projects, the co shall be appropriately included in the road and equipment accounts. If in connecti with the issuance of evidences of debt, it shall be accounted for as debt expense.

CASE 172.

*Query.* When equipment-trust certificates which mature serially are sold in one l at a flat discount rate upon their entire par value, how shall the discount be amortize

*Answer.* The discount and expense shall be amortized through charges to Incom in such manner that the ratio between the amortization charges and the principal the equipment-trust certificates outstanding will be uniform for all fiscal periods.

For example: A company issues five equipment-trust certificates, one certifica maturing each year. The debt discount and expense is $450. The distribution the discount and expense should be as follows:

First year, principal outstanding $5,000. . . amortization charge (rate 3 per cent) $1
Second year, principal outstanding $4,000. . amortization charge (rate 3 per cent) 1
Third year, principal outstanding $3,000. . . amortization charge (rate 3 per cent)
Fourth year, principal outstanding $2,000. . . amortization charge (rate 3 per cent)
Fifth year, principal outstanding $1,000. . . amortization charge (rate 3 per cent)

CASE 173.

*Query.* To what account shall be charged special assessments for construction a maintenance of sewers adjacent to property the cost of which is includible in balanc sheet account No. 705, "Miscellaneous physical property"?

*Answer.* Assessments for the construction of such sewers shall be included in accou No. 705, "Miscellaneous physical property," and those for maintenance in accou No. 534, "Expenses of miscellaneous operations," provided the property is operat by the carriers; otherwise to account No. 511, "Miscellaneous nonoperating physic property."

CASE 174.

*Query.* A carrier borrowed equipment from a foreign line. To what account sha it charge amounts which it pays the foreign line for transporting the equipment its line?

*Answer.* To the appropriate income account "Rent for equipment." (*See Case 7*

CASE 175.

*Query.* To what account shall be charged the rent paid for work equipment used b a carrier in maintenance of way and structures?

*Answer.* To account No. 540, "Rent for work equipment." Rents paid or receiv for work or other equipment used in operation are income items. (*See section 2 the general instructions for the Classification of Income, Profit and Loss, and Gener Balance Sheet Accounts.*)

CASE 176.

*Query.* Under the condition that the expenses of maintaining equipment are borne jointly by all users of a joint terminal, how shall a carrier account for amounts received in reimbursement of taxes upon equipment used in the operation of the terminal?

*Answer.* When the taxes are separable from other taxes the amount received in reimbursement therefor shall be credited by the operating company to the appropriate account for rent from equipment. In case they are inseparable, the credit shall be to account No. 508, "Joint facility rent income." Correspondingly the debtor company shall charge these amounts to the appropriate account for rent for equipment or to account No. 541, "Joint facility rents," as may be appropriate.

CASE 177.

*Query.* When a carrier's funds are expended for construction purposes and interest charges are made to Road and Equipment under the provisions of account No. 76, "Interest during construction," to what accounts shall such interest be credited?

*Answer.* To account No. 515, "Income from unfunded securities and accounts."

CASE 178.

*Query.* A carrier's fiscal year end on December 31. In the early part of the calendar year the carrier issues short-term notes at a discount. How shall such discount be accounted for?

*Answer.* The carrier's accounts shall be kept in such manner that in its annual report to the Commission the discount assignable to the period before July 1 shall be charged to income account No. 547, "Interest on unfunded debt." The amount thus assignable may be, at the carrier's option, either the entire discount or an amount proportionate to the life of the notes up to July 1.

CASE 179.

*Query.* To what account shall be charged interest paid on deferred taxes?

*Answer.* To account No. 547, "Interest on unfunded debt."

CASE 180.

*Query.* The capital stock of a terminal company is owned in equal proportions by the tenant companies which jointly use the terminal. The net income of the terminal company each year is distributed equally between the tenant lines. What is the correct accounting for the amounts thus distributed?

*Answer.* Under the conditions stated the division of this income is in substance the issue of a dividend upon stocks owned by the proprietary companies, and shall be charged by the terminal company to account No. 553, "Dividend appropriations of income."

CASE 181.

*Query.* Under the terms of a contract for purchase of equipment the carrier is required to deposit with the trustees all amounts collected from insurance companies on trust equipment destroyed by fire, such amounts to be held by them until the property is replaced. In what account shall these deposits be carried?

*Answer.* The character of the deposits indicates the propriety of their inclusion in the group of balance-sheet accounts designated as "Investments." Such deposits shall therefore be charged to account No. 704, "Deposits in lieu of mortgaged property sold."

CASE 182.

*Query.* Are the provisions of account No. 726, "Property abandoned chargeable to operating expenses," applicable in the accounting for amounts chargeable to Operating Expenses in connection with the retirement of equipment?

*Answer.* They are not applicable.

CASE 183.

*Query.* What is the correct accounting for a carrier's investment in a spur track to an industry when the cost of ties in and grading for the tracks is borne by the industry?

*Answer.* If constructed upon the property of the carrier, the entire cost of the track shall be included in the carrier's road and equipment accounts, and the cost of the ties and grading assumed by the industry shall be included in account No. 778, "Other unadjusted credits," or in account No. 606, "Donations," as may be appropriate. Amounts thus credited to account No. 606, "Donations," shall correspondingly be charged to account No. 615, "Surplus appropriated for investment in physical property," and concurrently credited to account No. 779, "Additions to property through income and surplus."

If constructed upon the land of the industry, only the portion of the cost which is borne by the carrier shall be included in its road and equipment accounts. (*See paragraph 11, section 2, in the general instructions for road and equipment accounts.*)

CASE 184.

*Query.* Under the provisions of paragraph 8, section 1, of the special instructions for the classification of operating revenues, for convenience in accounting is it permissible for a carrier to include revenue overcharges, when discovered, in the agency accounts and to clear the unrefunded items to account No. 778, "Other unadjusted credits."

*Answer.* Overcharges may be temporarily carried in the agency accounts, provided they are transferred to account No. 778, "Other unadjusted credits," if unrefunded at the end of 60 days.

CASE 185.

*Query.* To what account shall be charged the cost of ties used in the construction of pit cattle guards?

*Answer.* If crossties directly supporting the rails, the charge shall be to account No. 8, "Ties." Otherwise the charge shall be to account No. 13, "Right-of-way fences."

CASE 186.

*Query.* In connection with the elimination of grade crossings a carrier purchases land immediately outside its right of way to provide slopes in a highway. How shall the cost of this land be accounted for—

(*a*) When the carrier retains title to the land, and

(*b*) When the carrier relinquishes the title to the land to the municipality?

*Answer.* The cost shall be charged—

(*a*) To account No. 2, "Land for transportation purposes."

(*b*) To account No. 15, "Crossings and signs." (*See Case 100.*)

CASE 187.

*Query.* To prevent another railroad from crossing its tracks at grade a carrier contributes an amount toward the cost of constructing the crossing of the other railroad above the grade of its own tracks. To what account shall be charged the amount of this contribution?

*Answer.* The amount of the contribution shall be charged by the carrier to account No. 15, "Crossings and signs."

CASE 188.

*Query.* To what account shall be charged the cost of a gasoline storage plant consisting of a storage tank and pump? The gasoline is for use in motor cars.

*Answer.* To account No. 20, "Shops and enginehouses."

CASE 189.

*Query.* To what account shall be charged the cost of a water pipe line constructed from shop water-supply system to passenger-car yards, for conveying water for car cleaning and for filling water tanks in passenger cars?

*Answer.* To account No. 20, "Shops and enginehouses."

CASE 190.

*Query.* In what accounts shall be classed a carrier's investment in railway material storehouses?

*Answer.* If the storehouses are located at shops and are devoted to the storage of material for maintenance of way and structures and for maintenance of equipment, the investment shall be included in account No. 20, "Shops and enginehouses." If not thus located, when devoted to the storage of material for maintenance of way and structures the investment shall be included in account No. 17, "Roadway buildings"; and when devoted to the storage of material and supplies for general purposes the investment shall be included in account No. 35, "Miscellaneous structures." If located at division or line terminal stations and devoted to the storage of station and train supplies the investment shall be included in account No. 16, "Station and office buildings."

CASE 191.

*Query.* A carrier purchases a number of section motor cars to replace handcars. Handcars are not included in its property investment accounts. To what account shall the motor cars be charged?

*Answer.* To account No. 37, "Roadway machines."

CASE 192.

*Query.* To what account shall be charged the cost of a ditching machine which is ordinarily operated while temporarily mounted upon a flat car?

*Answer.* To account No. 37, "Roadway machines."

CASE 193.

*Query.* To what account shall be charged the initial equipment of locomotives and cabooses with wrecking frogs when their installation is under a general plan?

*Answer.* To account No. 51, "Steam locomotives," and No. 53, "Freight-train cars," respectively.

CASE 194.

*Query.* To what account shall be charged the cost of medical services rendered for an employee injured while engaged in the construction of a new road?

*Answer.* To the account chargeable with the cost of the work in connection with which the employee was injured.

CASE 195.

*Query.* To what account shall be charged the cost of a law library installed by an operating carrier?

*Answer.* To account No. 16, "Station and office buildings."

CASE 196.

*Query.* To what account shall be charged amounts paid to trust companies for the registration and transfer of capital stock?

*Answer.* Payments in connection with the issue of capital stock are provided for in account No. 71, "Organization expenses." Payments in connection with the transfer of capital stock shall be included in account No. 460, "Other expenses."

CASE 197.

*Query.* What should be the accounting, under the provisions of Conference Ruling No. 87, for tariff charges for transportation over the carrier's own line of kitchen utensils, food, and other supplies for hotels and restaurants which serve the general public, the revenue from which is creditable to account No. 132, "Hotel and restaurant."

*Answer.* The revenue from such charges shall be credited to the revenue account appropriate for the service, and concurrently charged to expense account No. 442, "Hotels and restaurants."

CASE 198.

*Query.* Road A purchases fuel supply coal f. o. b. mines, which are located on Road B. B charges $1.10 per ton for transporting the coal to A's line, absorbing a charge of $2 per car for interchange switching service rendered by A. The mining company prepays B's freight charges and includes them in a specific charge against A. How shall A account for these freight charges?

*Answer.* A shall include in the cost of the coal the freight charges, less the switching charges absorbed. The switching charges shall be charged to account No. 110, "Switching."

CASE 199.

*Query.* One of a carrier's terminals is jointly operated for the benefit of its own business and that of a connecting line. Shall the amounts charged the tenant company for rent of locomotives used in the operation of the joint terminal be considered as a joint facility item and included by the lessor in account No. 508, "Joint facility rent income," or shall the item be considered as a hire of equipment item, and included in account No. 504, "Rent from locomotives"?

*Answer.* It shall be included in account No. 504, "Rent from locomotives."

CASE 200.

*Query.* How shall be classified the train-miles of a gasoline-electric motor combination freight and passenger car which transports passengers and less-than-carload freight?

*Answer.* In account No. 803, "Mixed-train miles."

CASE 201.

*Query.* A carrier owns a piece of real estate, the cost of which is included in account No. 705, "Miscellaneous physical property." The right to remove sand and gravel from this property is leased. To what account shall the carrier credit the compensation received under the lease?

*Answer.* Such portion of the amount received as represents the depletion in the value of the property due to the removal of the sand and gravel shall be credited to the investment account and the remainder shall be credited to income account No. 511, "Miscellaneous nonoperating physical property."

CASE 202.

*Query.* The accounting for small items of overcharges on freight shipments which are found to be unrefundable involves a considerable refinement in accounting. Is it permissible to carry these items in the revenue accounts until refund is actually made?

*Answer.* Revenue overcharges amounting to one dollar or less on any one shipment may be carried in the freight revenue accounts until refunded.

CASE 203.

*Query.* Under the effective classification, is it intended that the cost of repairs and renewals of switch lamps shall be included in account No. 389, "Yard supplies and expenses"?

*Answer.* It is the intent of the classification that only the cost of switch-lamp supplies, such as oil, wicks, etc., shall be included in this account. The cost of repairs and renewals of switch lamps is provided for in account No. 216, "Other track material."

CASE 204.

*Query.* What shall be the accounting for expenditures during construction for salaries of a traffic manager, a traffic superintendent, and for printing and compiling tariffs? These expenditures were made solely for the purpose and in advance of commercial operations, no commercial traffic of any kind having been transported during the period of construction.

*Answer.* Under the conditions set forth these expenditures shall be charged to a suspense account until the road begins operation, and shall then be cleared to the appropriate operating expense accounts.

CASE 205.

*Query.* Where grade crossings are eliminated through a joint arrangement between a carrier and Government, whereby the latter assumes a proportion of the cost, on what basis shall the carrier's charges to its property investment accounts be made?

*Answer.* The carrier shall include in its property investment accounts its proportion only of the expenditure includible in the accounts of the Classification of Investment in Road and Equipment. Consideration shall be given to credits to property accounts resulting from abandonment of property in connection with the joint project.

CASE 206.

*Query.* What shall be the accounting for employers' liability insurance premiums assessed under State laws and based on a percentage of the wages paid employees engaged in construction work?

*Answer.* Such premiums shall be regarded as a labor cost, chargeable to the work to which the labor is assigned.

CASE 207.

*Query.* Shall a proportion of the salaries and expenses of a construction engineer and his office force when engaged on maintenance work be charged to operating expenses?

*Answer.* When the services rendered by such officers and employees are merely incidental, no charge shall be made to operating expenses.

When members of a construction engineering force are specifically assigned or devote a material portion of their time to maintenance work, or an engineer in charge of maintenance and members of his force are specifically assigned or devote a material portion of their time to construction or work on additions and betterments, their salaries and expenses while so engaged shall be charged to the accounts appropriate to the work upon which they have been engaged or to which they have been specifically assigned. (*See Cases 10 and 22.*)

CASE 208.

*Query.* What account is chargeable with the cost of land outside the carrier's right of way, upon which is erected a storage warehouse includible in account No. 22, "Storage warehouses"?

*Answer.* The cost of the land shall be charged to account No. 2, "Land for transportation purposes."

CASE 209.

*Query.* In order to avoid the expense of eliminating grade crossings a carrier contributed a sum of money to relocate a short section of a turnpike which crosses its line several times. The turnpike as originally located will continue to be used for the accommodation of parties who otherwise would be shut off from access to the turnpike. To what account shall the carrier charge this contribution?

*Answer.* To road and equipment account No. 2, "Land for transportation purposes."

CASE 210.

*Query.* In order to secure a right of way to a new bridge a carrier removed another company's transmission line to another location. To what account shall this expense be charged?

*Answer.* To account No. 2, "Land for transportation purposes."

CASE 211.

*Query.* A carrier purchased right of way through a certain tract under an agreement with the owner of the property that within two years from the date of its franchise the carrier would substitute electricity for steam in the operation of its road. This substitution was found impracticable and a certain amount was paid the former owner of the land as a release from all damages claimed for violation of the conditions of purchase. To what account shall this payment be charged?

*Answer.* This payment shall be regarded as additional cost of the land and shall be charged to account No. 2, "Land for transportation purposes."

CASE 212.

*Query.* In the course of construction Road A has occasion to cross the tracks of Road B. The tracks of the latter company are slightly higher than the proposed grade of the former and it is finally decided to construct the crossing at grade. Road A agrees to lower the grade of Road B, to relay and reballast its tracks and reconstruct a highway crossing which lies entirely upon the property of Road B. The entire expense of the work is borne by Road A and included in its property investment account. What primary accounts shall be charged with the cost of the work?

*Answer.* The entire cost of the work shall be included in account No. 2, "Land for transportation purposes," as a part of the cost of acquiring the right of way.

CASE 213.

*Query.* A local improvement association issued a note in payment for land which it donated to a railway company for a building site. The site was donated upon condition that the company would erect shops thereon. Not being able to undertake the construction of the shops immediately upon the donation

of the land, the carrier has agreed to pay the interest on the note until such time as construction is actually commenced. To what account shall such interest be charged?

*Answer.* The amount of interest paid shall be carried in a suspense account until the final disposition has been determined upon. If the condition under which the donation was made is fulfilled, interest payments shall be charged to road and equipment account No. 2, "Land for transportation purposes." If the conditions are not fulfilled and the plan is abandoned, the amount of interest shall be transferred to profit and loss account No. 621, "Miscellaneous debits."

Until the actual fulfillment of all the conditions, the land should not be considered as a donation, but the value of the property shall be debited and credited to appropriate suspense accounts included respectively in balance sheet accounts No. 727, "Other unadjusted debits," and No. 778, "Other unadjusted credits."

CASE 214.

*Query.* To what account shall be charged the cost of building towers to carry an electric power company's wires over the tracks of a carrier?

*Answer.* Their cost shall be charged to account No. 15, "Crossings and signs."

CASE 215.

*Query.* A carrier operating through a public street under its franchise is required to bear the expense of paving between its tracks, the paving including several highway crossings. What distinction shall be made in distributing the cost of the work between road and equipment accounts No. 15, "Crossings and signs," No. 36, "Paving," and No. 39, "Assessments for public improvements"?

*Answer.* As the cost of the work is borne by the carrier solely because of its occupancy of the street, the entire cost of the initial paving shall be included in account No. 36, "Paving." The paving at crossings in this connection is incidental and its cost shall not be separately accounted for.

CASE 216.

*Query.* To what accounts shall be charged expenditures incurred in installing racks to support tanks containing hydrocarbon for snow-melting purposes, and in building a railing at a switch stand on a steep embankment for the protection of trainmen?

*Answer.* When these racks are installed primarily in connection with the removal of snow from station platforms or station grounds their cost shall be charged to road and equipment account No. 16, "Station and office buildings"; if installed primarily in connection with the removal of snow from tracks or switches, to road and equipment account No. 17, "Roadway buildings." Cost of building railing at a switch stand should be charged to road and equipment account No. 35, "Miscellaneous structures."

CASE 217.

*Query.* To what account under the Classification of Investment in Road and Equipment shall be charged the cost of a building used for storage of supplies for both roadway and equipment maintenance purposes and the expenditures for furniture and fixtures necessary to equip it for such use?

*Answer.* If the use of the building for either one of the two purposes greatly predominates and renders insignificant its use for the other purpose, the cost of the building and the furniture and fixtures necessary to equip it for use shall be charged to account No. 17, "Roadway buildings," or account No. 20, "Shops and enginehouses," as indicated by the principal use mentioned. If not used for either purpose to the predominant extent referred to, the cost of the building and furniture and fixtures necessary to equip it shall be charged to account No. 35, "Miscellaneous structures." (*See Case 190.*)

CASE 218.

*Query.* To what account shall a carrier charge the cost of its installation of a tie-treating plant?

*Answer.* To account No. 17, "Roadway buildings."

CASE 219.

*Query.* A carrier maintains and operates a number of battery-charging plants installed in distinct buildings at various terminals and enginehouses for the purpose of charging storage batteries placed on locomotives to provide current for electric headlights. To what account shall the investment in these plants be charged and how shall the expenses of maintenance and operation be classified?

*Answer.* The investment in this property shall be charged to accounts No. 20, "Shops and enginehouses," and No. 44, "Shop machinery." The cost of maintaining the buildings shall be charged to account No. 235, "Shops and enginehouses," and of maintaining the boilers and machinery to account No. 302, "Shop machinery." The expense of operation shall be equitably apportioned between accounts No. 387, "Other supplies for yard locomotives," and No. 390, "Other supplies for train locomotives."

CASE 220.

*Query.* In what account shall be included the cost of constructing pipes which are used for conveying shavings from woodworking machines in shops to the point at which they are disposed of?

*Answer.* The cost of constructing such pipes shall be included in account No. 20, "Shops and enginehouses."

CASE 221.

*Query.* To what account shall be charged the cost of a building used for the production of oxy-acetylene gas, which is piped to various units comprising a shop layout?

*Answer.* The cost of the building shall be charged to investment in road and equipment under account No. 25, "Gas producing plants."

CASE 222.

*Query.* By the terms of an agreement between a railroad company and a telegraph company it is provided that the railroad company shall furnish the labor and the telegraph company the material required to construct, maintain, and operate a telegraph line along the railroad company's right of way. To what account shall be charged the railroad company's expenditures in connection with the construction of the telegraph line?

*Answer.* The railroad company's proportion of the cost of labor furnished to construct the original telegraph line shall be charged to road and equipment account No. 26, "Telegraph and telephone lines." (*See Case 223*)

CASE 223.

*Query.* To what account shall be charged the expenditures in connection with the installation of cross arms on poles owned by a telegraph company for the accommodation of the railway company's telephone lines? Under the agreement the entire cost of installation is borne by the railway company, but title to one-half of each cross arm installed is vested in the telegraph company.

*Answer.* As the entire expense of the installation is assumed by the railroad company, even though it acquires but one-half ownership in the cross arms, such expense shall be regarded as the railroad company's interest in the investment and charged to account No. 26, "Telegraph and telephone lines." In this connection, see the last paragraph of section 2 of the general instructions contained in the Classification of Investment in Road and Equipment, which provides that the carrier's proportion only of the cost of joint projects shall be included in the accounts of that classification. (*See Case 222*).

CASE 224.

*Query.* To what account shall be charged the cost of a well containing several pumps, the water from which is used solely in a power plant?

*Answer.* The cost of the well shall be charged to account No. 29, "Power plant buildings." The cost of the pumps shall be charged to account No. 45, "Power plant machinery."

CASE 225.

*Query.* To what account shall be charged the cost of installing lighting systems in switching yards?

*Answer.* The cost of overhead wires, insulators, and connections shall be charged to account No. 32, "Power distribution systems"; the items of construction enumerated in the text of account No. 33, "Power line poles and fixtures," shall be charged accordingly. The cost of electric lamps, globes, and reflectors, if they be used for lighting yards, shall be charged to account No. 35, "Miscellaneous structures." If they be used for lighting buildings, the cost shall be charged to the account represented by the building served.

CASE 226.

*Query.* To what account shall be charged underground conduits used for carrying electric light and power wires for general purposes not in connection with electric railway operations?

*Answer.* The cost of underground conduits in connection with power transmission and power distribution systems shall be included in account No. 34, "Underground conduits," whether the power conducted is for the propulsion of trains or for general purposes.

CASE 227.

*Query.* To what account shall be charged the cost of oak blocking and wedges for rerailing equipment?

*Answer.* The cost of first equipping work or other equipment with blocking and wedges for rerailing equipment shall be charged to the appropriate equipment accounts under investment in road and equipment.

The cost of renewals shall be charged to operating expense accounts Nos. 326, "Work equipment—Repairs," 387, "Other supplies for yard locomotives," 399, "Other supplies for train locomotives," or 402, "Train supplies and expenses," as indicated by the class of equipment supplied.

Wrecking frogs and wrecking wedges supplied to yards should be charged to operating expense account No. 389. "Yard supplies and expenses." (*See Case 193.*)

CASE 228.

*Query.* How may assessments chargeable to account No. 39, "Assessments for public improvements," be distinguished from those chargeable to account No. 532, "Railway tax accruals"?

*Answer.* Amounts chargeable to account No. 39, "Assessments for public improvements," are restricted to assessments which apply to defined areas within taxing districts and are based upon specific benefit to property from the construction of public improvements. Any proportion of the cost of such improvements which is included in the general tax levy for a regular taxing district shall be included in the appropriate tax account in Income.

CASE 229.

*Query.* To what account shall be charged an amount paid in the compromise of a suit filed jointly by a municipality and a paving company against a carrier for an assessment for paving a street adjacent to railway property? To what account shall be charged the court costs which were paid by the carrier?

*Answer.* The amount paid in the compromise of the suit shall be charged to account No. 39, "Assessments for public improvements." The court costs shall be charged to account No. 454, "Law expenses."

CASE 230.

*Query.* While a carrier's line was under construction it conducted commercial operations which made necessary certain expenditures for maintenance of track. To what account shall be charged this cost of maintenance?

*Answer.* When commercial operations are conducted over a line under construction the cost of track maintenance during the construction period shall be charged to account No. 40, "Revenues and operating expenses during construction."

CASE 231.

*Query.* To what account shall be charged the cost of portable buildings used in construction work?

*Answer.* The cost of such structures shall be charged to the construction work in connection with which the expenditure is incurred. If not thus assignable, their cost shall be charged to account No. 43, "Other expenditures—Road."

CASE 232.

*Query.* In what account shall be included a carrier's investment in apparatus for a testing laboratory?

*Answer.* The cost of the initial equipment of laboratory apparatus shall be included in account No. 44, "Shop machinery." The cost of repairs and renewals shall be included in account No. 302, "Shop machinery."

CASE 233.

*Query.* A carrier has purchased a considerable number of beet racks to be used on its cars during the beet shipping season. These racks are not for temporary use. They cost $125 apiece, are substantial in structure, and form part of the company's permanent equipment, being stored between seasons. Shall their cost be charged to operating expense account No. 402, "Train supplies and expenses," or to road and equipment account No. 53, "Freight-train cars"?

*Answer.* As these racks are not of the type of temporary car fitting, but are permanent equipment, their cost shall be charged to account No. 53, "Freight-train cars," under a subaccount, if desired, and depreciated under rules applying to equipment.

CASE 234.

*Query.* To what account shall be charged investment in locomotives permanently withdrawn from commercial service and assigned to shop or storehouse switching service?

*Answer.* Investment in locomotives permanently withdrawn from commercial service and assigned to switching service at shops or storehouses shall be charged to account No. 57, "Work equipment."

CASE 235.

*Query.* To what accounts shall be charged the initial cost and the cost of maintaining motor cars used in "hump" yards for transporting car riders between different parts of the yards?

*Answer.* The initial cost of cars shall be charged to account No. 57, "Work equipment." The cost of maintenance shall be charged to account No. 326, "Work equipment—Repairs."

CASE 236.

*Query.* To what account shall be charged the cost of farm machinery and live stock for a demonstration farm operated by a carrier?

*Answer.* To account No. 58, "Miscellaneous equipment." (*See Case 142.*)

CASE 237.

*Query.* To what account shall be charged revenue overcharges previously written off through account No. 605, "Unrefundable overcharges," and later refunded.

*Answer.* To account No. 605, "Unrefundable overcharges."

CASE 238.

*Query.* What is the correct accounting for the cost of adding, calculating, and typewriting machines purchased—

(*a*) To replace equipment charged to property account;

(*b*) To replace similar equipment, the cost of which was originally charged to operating expenses; and

(*c*) As the initial equipment of a road in operation?

*Answer.* Such expenditures shall be charged as follows:

(*a*) To the stationery and printing accounts in Operating Expenses appropriate for the departments making use of the machines.

(*b* and *c*) To the road and equipment accounts to which is chargeable the cost of the buildings of the class in which the machines are used.

Charges to property investment as additions under the provisions of this case are conditioned on the understanding that a satisfactory register is maintained to enable the proper distinction to be made between additional equipment and renewals or replacements. (*See Case 141.*)

CASE 239.

*Query.* What disposition shall be made in a carrier's accounts of other carriers' proportions of overcharges assumed under the operation of the rules of the Freight Claim Association which establish a voucher minimum of $1.

*Answer.* Proportions of overcharges due from foreign lines assumed in settlement of claims because less than the voucher minimum of $1 shall be adjusted through the revenue accounts.

CASE 240.

*Query.* A carrier's baggage storage tariffs provide that charges shall be assessed at the rate of 25 cents for the second 24 hours or fraction thereof, and 10 cents for each succeeding 24 hours or fraction thereof. The laws of the different States governing the sale of unclaimed baggage provide that it shall not be disposed of in less than variously specified periods. In one State, for example, the period prescribed is three months. In actual practice, however, baggage is held for a year, resulting in storage accruals of from $30 to $40 on every piece. The proceeds from sales average $1.50 a piece. Is it permissible to accrue storage revenue only for the time carrier is required by law to hold the baggage subject to claim?

*Answer.* Under the assumption that the retention of this baggage beyond the time the carrier is required by law to hold such property is for the convenience of the carrier only, there is no objection to discontinuing storage accruals after that date provided the baggage is actually sold as unclaimed.

CASE 241.

*Query.* A carrier has an arrangement with several electric railways that parallel its tracks for a considerable distance, whereby both passengers and freight originating at or destined to intermediate points that are common to both companies are received at or delivered to these points by the electric railways and the necessity avoided of stopping through trains or providing local trains for the accommodation of this traffic. The electric carriers concur in the tariffs upon which the transportation charges are assessed. In lieu of dividing the tariff rates with the electric railways to compensate them for the service they perform they are paid certain fixed monthly payments. To what account shall such payments be charged?

*Answer.* The amount of these payments to the electric railways may properly be considered as an ordinary division of the revenue and credited by the electric railways to appropriate revenue accounts. Correspondingly, the charges of the steam carrier shall be to its revenue accounts.

CASE 242.

*Query.* A carrier has in effect a traffic arrangement with certain connecting lines which provides that on competitive freight the switching line will receive a division of the through rate of approximately $10 per car. This division of rate is separate from and in addition to the tariff switching charge. To what account shall such revenues be credited?

*Answer.* When the terminal service involves only a switching movement the revenue shall be credited by the terminal carrier to account No. 110, "Switching." When the terminal carrier performs a road service the entire amount received by it shall be credited to account No. 101, "Freight."

CASE 243.

*Query.* To what account shall be charged the pay of a car inspector who lubricates cars in addition to his other duties?

*Answer.* The pay of such an employee whose duties are specifically divided between inspection and lubrication of cars shall be apportioned, upon the basis of the time devoted, to the repair and lubrication accounts, but the pay of such an employee engaged in ordinary car inspection, whose service in lubricating cars is incidental to his regular duties, shall be included in the appropriate equipment repair account.

CASE 244.

*Query.* What shall be the accounting for amounts paid a terminal company for making and breaking up trains? The rates for this service are now in the terminal company's tariffs.

*Answer.* Amounts paid a terminal company for making and breaking up trains upon the basis of switching tariff rates shall be treated as a division of the revenue and charged to account No. 101, "Freight," account No. 102, "Passenger," or account No. 110, "Switching," as may be appropriate. When an empty car is moved otherwise than in connection with a loaded movement, the amount paid for switching shall be charged to account No. 411, "Other expenses." The revenue collected by the terminal company shall be credited to account No. 110, "Switching." (*See Case 27.*)

CASE 245.

*Query.* How shall revenue of a terminal line operating within a switching district and participating in the movement of through less-than-carload shipments from points on its line to points on connecting lines be classified? The service performed at a published tariff rate involves picking up, classifying, and reloading of less-than-carload shipments.

*Answer.* The revenue shall be included in revenue account No. 110, "Switching."

CASE 246.

*Query.* What is the correct accounting for revenue derived from the transportation in baggage cars of baby carriages, bicycles, dogs, etc., when the baggage tariff under which they are handled specifies that such articles will be checked and charges assessed at excess baggage rates for the gross weight of the articles transported? None of the articles form any part of the baggage allowance.

*Answer.* Such revenue shall be credited to account No. 108, "Other passenger-train." (*See Case 144.*)

CASE 247.

*Query.* To what account shall be charged the pay of electricians while engaged in trimming, cleaning, and adjusting arc lights in yards?

*Answer.* To account No. 377, "Yardmasters and yard clerks."

CASE 248.

*Query.* To what accounts shall be credited revenue received for the movement of a carnival company on the basis of specific amount for transportation

between two stations on a carrier's line, the cars of the carnival company being attached to a regular mixed train handling other passengers and freight?

*Answer.* Such amounts shall be equitably apportioned between account No. 108, "Other passenger-train," and account No. 112, "Other freight-train."

CASE 249.

*Query.* To what account shall be credited the amount collected from a lumber company, under the terms of a guaranty, by which the lumber company agreed to ship a certain amount of lumber during a specified period and is therefore obligated to pay a stated amount per thousand feet for the lumber it failed to ship?

*Answer.* The amount collected under the guaranty shall be credited to account No. 112, "Other freight-train."

CASE 250.

*Query.* Note A, applying to primary account No. 121, "Freight," under general account II, "Transportation—Water line," on page 19 of the classification for operating revenues of steam roads, provides that "Other carriers' proportions of revenue and of uncollectible undercharges paid by the carrier on account of errors in routing and billing shall be charged to operating expense account No. 432, 'Operation of terminals,'" while the text of account No. 433, "Incidental," under the subhead "Loss and Damage—Freight," requires that that account shall be charged with "* * * uncollectible freight charges paid other carriers on misrouted * * * shipments."

Is there not a conflict between these instructions?

*Answer.* The instructions in Note A under account No. 121, "Freight," shall be followed. The text of account No. 433, "Incidental," at the first favorable opportunity will be brought into harmony with the provisions of the note mentioned.

CASE 251.

*Query.* To what account shall be credited commissions received by a carrier through its station agents for selling accident insurance policies?

*Answer.* To account No. 133, "Station, train, and boat privileges."

CASE 252.

*Query.* To what account shall be credited amounts collected from passengers as penalties for loss of baggage checks?

*Answer.* Collections from passengers for lost baggage checks shall be credited to account No. 143, "Miscellaneous."

CASE 253.

*Query.* To what account shall a carrier credit amounts collected at the rate of $1 per day for use of its tracks by a land company for the storage of a private car?

*Answer.* Amounts collected for the privilege of parking or storing private or chartered cars on a carrier's tracks shall be credited to account No. 143, "Miscellaneous."

CASE 254.

*Query.* To what account shall be credited amounts collected under a tariff provision to the effect that a stated charge shall be made for inspection of shipments of perishable freight not moving under refrigeration, the inspection being performed at various points between point of origin and destination for the purpose of ascertaining whether or not shipments are in proper condition to continue movement?

*Answer.* Under the conditions indicated, the amounts so collected shall be credited to account No. 143, "Miscellaneous."

CASE 255.

*Query.* In what account shall be included the proceeds derived from the sale of waste paper and old records?

*Answer.* The amount of such proceeds shall be credited to account No. 143, "Miscellaneous."

CASE 256.

*Query.* To what account shall be credited a carrier's revenue, on basis of tariff charges, for trimming coal cargoes transferred from cars to vessels belonging to outside parties? To what account shall the expense of this service be charged?

*Answer.* The revenue from trimming such coal cargoes shall be credited to account No. 143, "Miscellaneous." The expense of the service shall be charged to account No. 375, "Coal and ore wharves." (*See Case 155.*)

CASE 257.

*Query.* It frequently occurs that a joint facility is used in yard and terminal operations of one carrier and in other than yard or terminal operations by the other carrier. In accounting for settlements between carriers covering the operation of joint facilities, is it permissible for each carrier to use the particular joint facility primary account under general account IV, "Transportation—Rail line," which is appropriate according to the use of the property?

*Answer.* This may be done.

CASE 258.

*Query.* To what account shall be credited an amount billed against a lessee company under a contract covering the use of joint facilities for the proportion of an assessment for public improvements?

*Answer.* The assessment paid upon property used jointly shall be charged by the owning company to the appropriate investment account, and the proportion paid by the user shall be charged by it to account No. 541, "Joint facility rents," a corresponding credit being made by the owner to account No. 508, "Joint facility rent income."

CASE 259.

*Query.* Roads A and B equally own a passenger station and the land on which located, the station being so situated that both roads use their own tracks for trains arriving or departing therefrom. The station is not a regular freight

or passenger terminal for either road. The station employees are carried on each road's pay rolls for 50 per cent of their salaries, but Road A furnishes all station supplies and charges B with 50 per cent of such expense. The expenses of the station supplies average about $30 per month. To what account shall be charged expenditures by Road A for supplies furnished the station?

*Answer.* The proportion of the expense assumed by B shall be credited by A and charged by B to the appropriate joint facility operating expense accounts.

CASE 260.

*Query.* In what account shall be included the cost of compiling statistics for use in connection with rate cases (*a*) when they are prepared by a carrier's regularly employed accountants; (*b*) when such statistics are compiled by specifically retained statisticians and accountants?

*Answer.* The cost of compiling such statistics shall be included (*a*) in the account to which the employees' labor is ordinarily charged; (*b*) in the same accounts which would have been charged if the labor had been performed by the regular employees of the carrier. This also applies to the amounts paid as overtime to regularly employed office forces.

CASE 261.

*Query.* In the operations of a small carrier a locomotive regularly performs both train and yard service, the latter comprising switching at junctions and terminals and consisting of spotting cars at industrial and warehouse tracks, picking up empties at terminals, delivering cars to connecting carriers at interchange tracks, and making up trains. Upon what basis should a segregation be made in the accounts for train and yard service to cover wages of trainmen and enginemen, and the cost of fuel, water, lubricants, and other supplies? Should the amount of time devoted to each service be the determining factor? If so, what disposition shall be made of excess time at terminals waiting for schedule time of leaving?

*Answer.* The expenses of a road locomotive engaged in switching only incidentally or at way stations should be classified as road service. When a locomotive regularly combines train service with yard service at junction points and terminals where regular switching service is maintained and the basis of compensation varies according to class of service the wages of trainmen and enginemen shall be divided between train expenses and yard expenses upon basis of compensation allowed for each class of service. Where no distinction is made as to compensation the apportionment shall be upon the basis of time devoted to each class of service. The cost of fuel, water, and other supplies shall be divided according to the mileage of each class of service.

CASE 262.

*Query.* At various industries on a carrier's line, the carrier furnishes the locomotives and performs all switching on industry tracks for its own benefit and also for that of connecting lines. Bills are rendered against the other carriers on the basis of cost of the service performed. How shall the compensation be accounted for?

*Answer.* The proportion which covers the cost of repairs to and depreciation of locomotives shall be cleared through joint-facility accounts, "Maintaining joint equipment at terminals." The proportion covering wages of trainmen and enginemen and the cost of fuel, stores, and other supplies for locomotives

shall be cleared through joint-facility accounts, "Operating joint yards and terminals." Any allowance for the rent of locomotives shall be included in the appropriate locomotive rent accounts in Income.

CASE 263.

*Query.* To what account shall be charged the cost of initial application of oil to roadbed?

*Answer.* The cost of the initial and all subsequent applications of oil to roadbed shall be included in operating expense account No. 202, "Roadway maintenance."

CASE 264.

*Query.* In the text of operating expense account No. 202, "Roadway maintenance," under the subhead, "Care of roadbed," appears the item "constructing and cleaning tile ditches, open ditches, and drains." What is the nature of the construction referred to?

*Answer.* The item in question does not relate to permanent improvements, but is intended to apply to work of a temporary character in connection with maintenance.

CASE 265.

*Query.* To what account shall be charged the amount of a judgment rendered in behalf of a former employee in a suit against a carrier for personal injuries sustained while entering its general office building? This injury was alleged to have been caused by a defective step. The injured person was a station employee at the time of the accident, but was not acting in the discharge of his duties when it occurred.

*Answer.* The amount of the judgment shall be charged to account No. 460, "Other expenses."

CASE 266.

*Query.* To what account shall be charged the rent of a house used for storing track tools?

*Answer.* Account No. 277, "Other expenses."

CASE 267.

*Query.* To what account shall be charged the cost of disinfecting work equipment?

*Answer.* The cost of disinfecting cars used in work service shall be included in the accounts chargeable with the supplies consumed in connection with the operation of work trains and shall be included in the cost of the work to which the service pertains.

CASE 268.

*Query.* How shall a carrier account for the cost of repairs to locomotives used as work equipment?

*Answer.* All repairs to locomotives whether assigned to transportation service or work service, to the extent that the repairs were occasioned by the use of such equipment in maintenance work, shall be charged to account No. 326, "Work equipment—Repairs." The apportionment of repairs to locomotives used both in transportation and maintenance service shall be upon an equitable basis.

CASE 269.

*Query.* Due to an error on the part of a station employee, an item of customs charges amounting to $50 was omitted from billing and is now found to be uncollectible. To what account shall this amount be charged?

*Answer.* To account No. 411, "Other expenses."

CASE 270.

*Query.* To what account shall be charged amounts paid to claimants in settlement of losses occasioned by errors of a company's operators in transmitting commercial messages, the telegraph line being owned and operated by the railroad company?

*Answer.* To account No. 411, "Other expenses."

CASE 271.

*Query.* To what account shall be charged payments for parcels lost while in the possession of a carrier's check room?

*Answer.* To account No. 419, "Loss and damage—Baggage," or No. 433, "Incidental," as may be appropriate.

CASE 272.

*Query.* To what account shall be charged the pay of telegraph operators located in general offices who render services to all departments having offices in the general office building?

*Answer.* To account No. 452, "Salaries and expenses of clerks and attendants."

CASE 273.

*Query.* To what account shall be charged amounts paid in settlement of injuries to persons occurring in connection with the operation of a pay-car train?

*Answer.* To account No. 460, "Other expenses."

CASE 274.

*Query.* A carrier has arranged for the payment of wages or salaries to employees who are members of the National Guard and have enlisted in the military service of the United States. How shall such allowances be charged during the period of enlistment?

*Answer.* Expenditures for the purposes stated shall be charged to account No. 460, "Other expenses."

CASE 275.

*Query.* To what account shall be credited rentals received from other companies for the use of roadway machines loaned to them?

*Answer.* If the roadway machines in question are permanently mounted for movement on carriers' tracks, the rentals shall be credited to account No. 507, "Rent from work equipment"; if not so mounted, rentals shall be credited to account No. 510, "Miscellaneous rent income."

CASE 276.

*Query.* To what account shall be credited rentals received by a carrier (*a*) for the use of portions of its right of way for cultivation purposes, (*b*) for use of a part of its right of way for a pole line of a telephone company?

*Answer.* On the assumption that there is no expense for maintenance of the property so used the rentals shall be credited to account No. 510, "Miscellaneous rent income."

CASE 277.

*Query.* To what account shall be credited fees charged for exchanging coupon bonds for registered bonds?

*Answer.* Fees collected by a carrier in connection with the exchange of coupon bonds for registered bonds shall be credited to account No. 519, "Miscellaneous income." (*See Case 284.*)

CASE 278.

*Query.* To what account shall be charged amounts assessed against carriers by a State for the maintenance of the office of State inspector of automatic couplers, air brakes, and automatic brakes? These assessments are collected from all carriers subject to the tax.

*Answer.* Such expenditures shall be charged to account No. 532, "Railway tax accruals." (*See Case 138.*)

CASE 279.

*Query.* To what account shall be charged a company's proportion of taxes paid by another carrier on buildings which are jointly owned and jointly used by both companies?

*Answer.* The proportion of taxes billed against the contributing carrier shall be charged by it to account No. 532, "Railway tax accruals."

CASE 280.

*Query.* A carrier is allowed a discount for the prompt payment of its taxes. To what account shall this discount be credited?

*Answer.* The accounting rules contemplate that the net amount of taxes paid shall be included in income accounts No. 532, "Railway tax accruals," No. 535, "Taxes on miscellaneous operating property," and No. 544, "Miscellaneous tax accruals." The discount realized, therefore, shall be credited to the account to which the taxes are chargeable. (*See Case 179.*)

CASE 281.

*Query.* A special tax was levied by a county to aid a carrier in the electrification and extension of its line. The carrier contributed its share of this special tax. To what account shall be credited the proceeds of the special tax received from the county? To what account shall the carrier charge its proportion of the special tax?

*Answer.* The total amount received by the carrier from the county as the proceeds of this special tax, being the amount expendable for electrification and extension, shall be credited to account No. 754, "Grants in aid of construction." The carrier's proportion of the tax shall be charged to income account No. 532, "Railway tax accruals."

CASE 282.

*Query.* To what account shall be charged uncollectible car demurrag charges? The debtor company has become bankrupt, and very little, if an of the amount due for demurrage will ever be collected.

*Answer.* Any items accrued under tariffs and creditable to revenue accoun Nos. 101 to 143, inclusive, when uncollectible, shall be charged to account N 533, "Uncollectible railway revenue."

CASE 283.

*Query.* In a personal injury case a carrier has a judgment rendered again it in a trial court, but takes an appeal from the verdict to a higher court, which the judgment is affirmed. Interest from the date of the judgment in th lower court was paid at the time of final settlement. To what account shall th interest be charged?

*Answer.* The interest shall be charged to account No. 547, "Interest on u funded debt."

CASE 284.

*Query.* To what account shall be charged amounts paid financial institution for their services in paying interest on a carrier's bonds?

*Answer.* The expenditures in question shall be charged to account No. 55 "Miscellaneous income charges." (*See Case 277.*)

CASE 285.

*Query.* To what account shall be credited amounts received in part paymen of an account which had previously been charged to account No. 533, "Uncol lectible railway revenue"?

*Answer.* To account No. 533, "Uncollectible railway revenue."

CASE 286.

*Query.* To what account shall be charged expenditures in connection with th examination of records and the securing of data as to traffic and other informa tion relative to the placing of a bond issue?

*Answer.* Such expenses shall be charged to a suspense account and subse quently cleared to funded debt expense if the bonds are issued; if not issued th expenses shall be charged to account No. 621, "Miscellaneous debits."

CASE 287.

*Query.* A carrier made application to a State industrial commission to carr its own risk under the provisions of a workmen's compensation law. The appli cation was granted on condition that securities of the value of $5,000 be de posited with and registered in the name of the State industrial commission. I accordance with this requirement $5,000 par value of certain municipal bonds due 1953, were purchased and deposited with the commission. The interest o the bonds, however, will not be retained in the fund, but will be collected b the commission and forwarded to the carrier. Shall the cost of the securitie be charged to account No. 711, "Special deposits"? To what account shall th income be credited?

*Answer.* Inasmuch as the text of account No. 711, "Special deposits," limit its use to deposits of a temporary character, the cost of the securities deposite

with the State industrial commission shall be charged to account No. 721, "Insurance and other funds." The income from the securities shall be included in account No. 516, "Income from sinking and other reserve funds."

CASE 288.

*Query.* In the Form of General Balance Sheet Statement for Steam Roads, First Revised Issue, effective June 15, 1910, it is provided that account B–15, "Other working assets," shall include "advanced charges billed out on waybills not reported received at the end of the month," and that account B–41, "Other working liabilities," shall include "prepaid charges billed out on waybills not taken into the month's accounts."

No provision is specifically made for these items in the Classification of General Balance Sheet Accounts, effective July 1, 1914. In what accounts under the effective general balance sheet classification shall these items be included?

*Answer.* They shall be included respectively in accounts No. 719, "Other current assets," and No. 768, "Other current liabilities."

CASE 289.

*Query.* Under the special instructions applying to the classification of operating revenues of steam roads it is provided that overcharges when discovered shall be credited to balance-sheet account No. 778, "Other unadjusted credits," while the text of account No. 761, "Miscellaneous accounts payable," requires that overcharges shall be included in "Miscellaneous accounts payable." Is there not a conflict in these instructions?

*Answer.* It is the intent of the classifications that revenue overcharges shall be credited to account No. 778, "Other unadjusted credits."

CASE 290.

*Query.* In computing train switching locomotive-miles is it permissible to accumulate switching at various way stations to obtain an aggregate of 30 minutes or more on which to base mileage? See rule 6 on page 12 of the Classification of Train-Miles, Locomotive-Miles, and Car-Miles for Steam Roads.

*Answer.* Train switching locomotive-miles shall be computed on a cumulative basis for a day's run or trip. If, for example, a locomotive devotes 15 minutes to switching at each one of seven stations during a day's run or trip, the total time, amounting to 1 hour and 45 minutes, shall be considered as 2 hours. If 15 minutes were consumed at each one of five stations the total time shall be considered as 1 hour.

CASE 291.

*Query.* A train run for the accommodation of shop employees also transports a number of revenue passengers who find it convenient to use this train. Is it permissible to include the mileage of such a train in account No. 804, "Special-train miles"?

*Answer.* The mileage of such a train shall be included in account No. 802, "Passenger-train miles."

CASE 292.

*Query.* The recording of small items of passenger overcharges which are found to be unrefundable involves much refinement in accounting. Is it per-

missible to carry such items in the revenue accounts until such time as refund is actually made?

*Answer.* Passenger overcharges amounting to $1 or less in any one case may be carried in the revenue accounts until refunded.

CASE 293.

*Query.* To what account shall be charged the cost of battery renewals and repairs to battery boxes on axle-lighted passenger equipment?

*Answer.* The cost of repairs to the battery boxes shall be charged to account No. 317, "Passenger-train cars—Repairs." The cost of renewals of negative and positive groups and acids shall be charged to account No. 402, "Train supplies and expenses."

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[fol. 329] PLAINTIFF'S EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity No. —

WILSON CYPRESS COMPANY, WILSON LUMBER COMPANY OF FLORIDA, Petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

Notice of Application for Injunction

To the Attorney-General of the United States; the Interstate Commerce Commission:

You will hereby take notice that the Petitioners herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a certain order entered by the Interstate Commerce Commission on the fifth day of July, A. D., 1932, and a certain amendatory order entered by the Interstate Commerce Commission on the twenty-eighth day of July, A. D., 1932, in Docket No. 18364, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and that said application will be heard at Atlanta, Georgia, on the fourteenth day of September, 1932, at 10 o'clock A. M. or as soon thereafter as the Court may hear the same.

Dated this ninth day of September, 1932.

H. P. Adair, C. G. Ashby, C. E. Cotterill, August G. Gutheirn, R. H. Hill, J. V. Norman, Solicitors for Petitioners.

[fol. 330] Service by copy of the within Application and Notice is hereby acknowledged this ninth day of September, 1932.

Elmer B. Collins, Special Assistant to the Attorney General, for Attorney General of the United States. E. M. Reidy, for Interstate Commerce Commission.

[fol. 331] PLAINTIFF'S EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity No. —

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND TUCKER SAVAGE, as and Constituting Florida Railroad Commission, Petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

Notice of Application for Injunction

To the Attorney General of the United States; the Interstate Commerce Commission:

You will hereby take notice that the Petitioners herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a certain order entered by the Interstate Commerce Commission on the fifth day of July, A. D., 1932, and a certain amendatory order entered by the Interstate Commerce Commission on the twenty-eighth day of July, A. D., 1932, in Docket No. 18364, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and that said application will be heard at Atlanta, Georgia, at 10 o'clock A. M. September fourteen, 1932, or as soon thereafter as the Court may hear the same.

Dated this ninth day of September, 1932.

Cary D. Landis, Attorney General of the State of Florida. T. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Petitioners.

[fol. 332] Service by copy of the within Application and Notice is hereby acknowledged this ninth day of September, 1932.

Elmer B. Collins, Special Assistant to the Attorney General, for Attorney General of the United States.
E. M. Reidy, for Interstate Commerce Commission.

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[fol. 333] PLAINTIFF'S EXHIBIT 8

STATE OF GEORGIA,
County of Fulton, ss:

Before me personally appeared L. F. Shore, who being by me first duly sworn deposes and on oath says: That he is log superintendent of F. S. Buffum Company, Incorporated, a Florida corporation; that said F. S. Buffum Company, Incorporated, now operates and for more than a year last past has operated a lumber mill at Jacksonville, Florida; that the cost of said mill of said F. S. Buffum Company, Incorporated, exclusive of the ground upon which the same is located, was approximately Ninety Thousand Dollars. ($90,000.00), and that said mill is of substantially that value today as a going concern, but that if said mill is unable to operate it will be of no substantial value for any purpose; that said mill has been operating almost continuously at full capacity for more than one year last past, and during said period has been cutting approximately 700,000 feet of cypress and hardwood lumber each month, and that the same now is in operation at full capacity and continuing its cutting at the same rate; that the supply of logs for such milling operations has been obtained by rail over the Atlantic Coast Line Railroad and by truck, with some small portion of such logs having been received by water; that all of such logs have been hauled for distances of less than 170 miles to said lumber mill, approximately 65% of such logs so received by said mill having been transported over the Atlantic Coast Line Railroad in intrastate commerce in Florida under the Cummer Scale of rates, and substantially all of the other 35% of such logs received by such mill having been transported by [fol. 334] truck; that such logs so transported by rail have amounted to approximately one hundred (100) car loads

of logs each month; that approximately ninety (90) men are now and for more than a year last past have been employed in said lumber mill in its operations, and approximately one hundred twenty-five (125) men have been employed in the logging operations necessary to supply said lumber mill with said logs; that said F. S. Buffum Company, Incorporated, pays taxes on account of said mill and its operations in the State of Florida in the amount of approximately $3,000.00, annually; that if the order of the Interstate Commerce Commission made July 5th, 1932, in Interstate Commerce Commission Docket No. 18364, as amended by the order of July 28th, 1932, and the rates prescribed therein become effective, said F. S. Buffum Company, Incorporated, will be unable to pay the transportation charges for hauling any logs to said mill under the rates so prescribed, and said mill will be forced to discontinue operations and said men employed in the logging and milling operations in connection with said mill as aforesaid will be thrown out of employment and said mill plant will become substantially without value; that affiant is personally familiar with each of the foregoing facts and is making this affidavit of his own knowledge and at the direction of the President of said company.

L. F. Shore.

Sworn to and subscribed before me this 14 day of September, A. D. 1932. Irene Hill, Notary Public. Notary Public, Fulton County, Georgia. My Commission Expires Aug. 21, 1936. (Seal of Irene Hill, Notary Public, Fulton County, Ga.)

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[fol. 335] PLAINTIFF'S EXHIBIT 9

STATE OF GEORGIA,
County of Fulton, ss:

Before me personally appeared Ralph Hunt, who being by me first duly sworn deposes and on oath says: That he is president of Hardwoods, Incorporated, a Mississippi corporation, duly authorized to do business in the State of Florida; that said Hardwoods, Incorporated, now operates and for more than five months last past has operated a lumber mill at Jacksonville, Florida, be-

ing the same mill property formerly occupied and operated by Putnam Lumber Company at Ortega, Florida; that the value of said lumber mill as a going concern is approximately $50,000.00 but that if said mill is unable to operate it will be of no substantial value for any purpose; that said mill has been operating continuously at full capacity for the five months last past, and during said period has been cutting approximately 400,000 feet of hardwood lumber each month, and that the same now is in operation at full capacity and continuing its cutting at the same rate; that said mill now has on hand orders for lumber which will require the operation of said mill at full capacity for more than six months in the future if said mill is able to obtain the same facilities for its log supply as exist and heretofore for the last five months have existed; that the supply of logs for such milling operations has been and is now being obtained by rail over the Atlantic Coast Line Railroad, and by truck and by water; that all of such logs have been hauled for distances of less than one hundred seventy (170) miles to said lumber mill; that during the last two months approximately 40% to 50% of such logs so received by said mill have been transported over the Atlan-
[fol. 336] tic Coast Line Railroad in intrastate commerce in Florida under the Cummer Scale of rates, and approximately 40% of such logs received by said mill have been transported by truck, and substantially 10% of such logs received by said mill have been transported by water; that such logs so transported by rail have amounted to approximitely twenty (20) car loads of logs a month; that approximately fifty (50) men are now and for more than five months last past have been directly employed in said lumber mill in its operations; that said lumber mill purchases its logs at various points in the State of Florida and numerous other men are likewise employed in the logging operations necessary to supply said logs to said lumber mill for its operations; that said lumber is manufactured at said mill solely for export from Jacksonville, Florida, to foreign countries; that if the order of the Interstate Commerce Commission made July 5th 1932 in Interstate Commerce Commission Docket No. 18364, as amended by the order of July 28th, 1932, and the rates prescribed therein, become effective, said Hardwoods, Incorporated, will be unable to pay the transportation charges for hauling such logs to

said mill under the rates so prescribed, except for distances within which it will be unable to purchase any substantial amounts of logs, and said mill will be forced to discontinue operations unless able to arrange for the transportation of a sufficient supply of logs by water to meet its milling demands; that it is at present impossible to determine whether arrangements can be made to transport such a supply of logs by water; that if said mill is forced to discontinue operations the aforesaid men employed in logging and milling operations in connection with said mill will be thrown out of employment and said mill plant will become substantially without value.

Halph Hunt.

Sworn to and subscribed before me this 14 day of September, A. D. 1932. Irene Hill, Notary Public. Notary Public, Fulton County, Georgia. My Commission Expires Aug. 21, 1936. (Seal of Irene Hill, Notary Public, Fulton County, Ga.)

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[fol. 337] IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Sept. 14, 1932

To the Honorable the Judges of said Court:

Now comes Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

1

Petitioner is a common carrier by railroad, operating in the States of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia.

2

The subject matter of this litigation concerns rates for services to be performed by petitioner and it is interested in the issues of this case.

Wherefore, petitioner prays that it be allowed to intervene in this cause.

Respectfully submitted, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Company.

[fol. 338] The foregoing petition of Atlantic Coast Line Railroad Company to intervene in the above stated cause is granted.

This 14 day of September, 1932.

Samuel H. Sibley, United States Circuit Judge. E. Marvin Underwood, U. S. District Judge. Louie W. Strum, U. S. District Judge.

[fool. 339] [File endorsement omitted]

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[fol. 340] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

MOTION TO DISMISS AND ANSWER—Filed Sept. 14, 1932

To the Honorable the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, as intervenor in the above mentioned cause, and with leave of the court, pleads to said cause.

1

MOTION TO DISMISS

Intervenor moves the court to dismiss the petition of the petitioners on the following grounds:

I. Said petition sets forth no sufficient reason why the orders of the Interstate Commerce Commission should be [fol. 341] enjoined. On the other hand it shows that the said orders and report of the Commission, as set forth in said petition should be sustained.

II. Because the facts set out in the report and found and established by the Commission therein on July 5, 1932

in its Docket No. 18364; in the case of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company; which report and orders thereon are set out in the bill in this cause, show that there were constitutional right and warrant for the exercise of federal power which has been exercised by the Commission.

III. For that said bill and the exhibits thereto show that the Interstate Commerce Commission has made adequate findings of fact to sustain its said orders. The said findings of fact are shown by the petition and report to have been sustained by competent and sufficient evidence.

IV. For that the basic, essential and jurisdictional facts necessary to justify and sustain the act of the Commission have been made clearly to appear in the report and findings of the Commission; and the findings of fact made by the Commission were warranted and demanded by the evidence before the Commission.

[fol. 342] V. For that the bill shows that the Commission did make findings supported by evidence as to the essential facts as to Florida intrastate rates on logs and the revenue therefrom, as to the effect of the intrastate rates, both as existing and prescribed, on the income of the Atlantic Coast Line Railroad Company, which did justify the aforementioned orders.

VI. For that the findings of fact by the Commission as set out in its said report and orders were and are sufficient to require and justify the report and orders.

Wherefore, intervenor prays that the said bill be dismissed.

Intervenor answers bill of petitioners and for answer thereto says:

1

Intervenor admits the allegations of paragraphs 1, 2 and 3 of the bill.

2

Intervenor admits the allegations of paragraph 4 of said bill except that the rates mentioned have been voluntarily maintained by it, and except that the Cummer scale of rates

was and still is the legal and lawful rate for the transpor-
[fol. 343] tation of logs in intrastate commerce within the State of Florida, and that no change could be made without the consent of the Florida Railroad Commission.

3

Intervenor admits the allegations of paragraph 5 of the bill except so much thereof as states there never was any movement of logs over six feet in length in interstate commerce. As to the allegation of said paragraph as to movement of such logs after February 28, 1928, this intervenor has not sufficient information either to admit or deny.

4

Intervenor admits the allegations of paragraph 6 of said bill. In addition to the allegations thereof, this intervenor says that the petition filed by the Georgia Public Service Commission with the Interstate Commerce Commission on May 3, 1926, fully and adequately set up that the scale of rates then in force in Florida for intrastate transportation of logs over six feet in length, except walnut, cherry, and cedar, over the lines of Atlantic Coast Line Railroad Company, up to distances of 170 miles, was violative of section 13 of the Act to regulate commerce.

The aforementioned rates for the transportation of logs intrastate in Florida over the Atlantic Coast Line were known as the "Cummer scale" of rates and will be hereinafter referred to as such.

[fol. 344] 5

Answering paragraph 7 of said bill, intervenor admits it was served with the aforementioned complaint and that it answered the same, which answer is referred to for its contents.

6

Intervenor admits the allegations of paragraphs 8 and 9 of the bill.

7

Intervenor admits so much of the allegations of paragraph 10 of said bill as relates to the introduction of testimony. Intervenor believes it to be true that the Georgia

Public Service Commission in the course of the proceedings in this cause before the Interstate Commission, averred that the end sought to be achieved under the complaint was an extension of the then effective intrastate Florida log rates interstate into Georgia. This intervenor denies that the said case did not proceed as a revenue case or that the proceeding was "not a revenue case." This court in its previous decisions has held against this contention and the Supreme Court of the United States has likewise held against it. This statement in the pleading is [fol. 345] based on an oral statement made by the Chairman of the Georgia Commission in opposition to introduction of certain evidence, which objection was overruled. This court dealt with that fact in its decision rendered January 17, 1929 in the case of State of Florida versus United States, 30 Fed. (2) 116-120, saying:

"We do not think the oral statement attributed to the chairman of the Georgia Commission during the examiner's hearing, to the effect that he desired the lowering of the interstate rate, rather than the raising of the intrastate rate, either changed the issues or limited the action of the Interstate Commerce Commission. Neither the examiner nor the counsel in their subsequent arguments before the Commission understood that the claim of discrimination by the intrastate rates against interstate commerce had been eliminated." See also 282 U. S. 194.

9

Intervenor admits the allegations of paragraph 17 of said bill.

[fol. 346]

10

Answering paragraph 18 of said bill intervenor admits that the mandate of the Supreme Court of the United States in this cause came down and that the judgment of the Supreme Court was made the judgment of this court.

11

The allegations of paragraph 19 of said bill are admitted by intervenor except as to the contents of the motions of the Georgia Public Service Commission and Atlantic Coast Line Railroad Company to reopen the proceedings before

the Interstate Commerce Commission. Reference to said motions themselves is made for the contents of each of them; and also except as to the allegation that neither of said motions asserted that the level of the Florida intrastate rates was so low as to constitute a burden either upon interstate commerce or upon the revenue of the carrier—that allegation is denied.

[fol. 347]

12

The allegations of paragraph 20 of the bill are admitted except as to the contents of the reply to the motions referred to in paragraph 19. Said reply is referred to for the contents thereof.

13

Answering paragraph 21 of the bill this intervenor admits there was a hearing on the reopened proceedings before the Interstate Commerce Commission, at Jacksonville Florida, on June 10, 11, and 12, 1931, and a further hearing in Washington, D. C. on July 20 and 21, 1931.

This intervenor believes that the assertions attributed to the State of Florida in said paragraph are true, but says that they were then and are now incorrect as to matters of law.

The remainder of the allegations of said paragraph are denied by this intervenor except as to the allegation that the evidence was taken before an examiner for the Interstate Commerce Commission.

14

Answering paragraph 22 of said bill, intervenor denies the allegation that the Georgia Public Service Commission offered no evidence whatever to prove any revenue burden on interstate commerce caused by the application of the [fol. 348] Florida intrastate scale of rates; intervenor admits that the issue was in the proceeding and that a motion to dismiss that portion of the complaint which under such ruling was construed as alleging that said Florida intrastate scale of rates unduly burdened interstate commerce, was made by the intervenors in that case; and that the Interstate Commission denied that motion in its report and orders of July 5, 1932.

The allegations of paragraph 23 of said bill are denied by intervenor except as hereinafter stated:

Intervenor admits that a request was made upon it that it produce at the hearing which was held in Jacksonville, Florida on June 10-12, 1931, a statement of the number of cars, total tonnage, and charges applicable thereto covering transportation on logs of the tariff description involved in these proceedings, moving over a period of five years beginning February 1, 1926 and ending January 31, 1931. This demand by the Florida Railroad Commission was dated May 16, 1931.

A like demand was made by the other contestants dated May 14, 1931. The Atlantic Coast Line Railroad Company replied under date of May 21, 1931 in part as follows:

[fol. 349] "While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived thereon, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation of the interstate and intrastate movements, nor of the separation as between the several classes or length of logs handled. Neither during the periods referred to, nor at the present time, it is the practice of shippers to indicate in their bills of lading the class of logs offered for shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

This demand was then submitted to the Interstate Commerce Commission by the Florida Commission and the various shippers on May 29, 1931. Reply was made thereto by the Atlantic Coast Line Railroad Company, setting up that it had no records from which that data could be compiled; and also that the subpœna requested was not for the

production of any document or paper then in the hands of the Coast Line Company but sought rather to compel it through subpœna to prepare and compile certain state-
[fol. 350] ments; and in addition the request related to a miscellaneous mass of information, very large in volume, with no indication whatever as to the extent, if any, of the relevancy thereof to any issue in the proceeding.

The Commission denied the request for that it was not in compliance with rule 13(b) of the rules of practice of the Interstate Commerce Commission for that it did not specify what books, papers or documents of the defendant (Atlantic Coast Line Railroad Company) were desired; and also because the application did not show that the books, papers or documents sought would be of service in the determination of the proceedings. The Interstate Commission then called attention to the fact that

"defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary."

The hearing proceeded on June 10, 11, 12, 1931 in Jacksonville and was adjourned to Washington, D. C. and further hearings were held on July 20, and 21, 1931. The Atlantic Coast Line Railroad Company submitted a great [fol. 351] deal of data by way of exhibits and oral testimony as to many phases of transportation of logs. No further demand was made upon the Coast Line Company for this data and no further effort was made by the petitioners to have the Commission issue a subpœna duces tecum covering the matters and things mentioned. Furthermore neither the notice or application for subpœna duces tecum stated that the matters and things required were within the power of the Atlantic Coast Line to furnish. The demand was not for the furnishing of certain papers, but was for the statement of a great deal of data which the Atlantic Coast Line had not made and which it could not make from its records.

16

Answering paragraph 24 of said bill, intervenor admits that the examiners for the Interstate Commerce Commis-

sion to whom the said proceeding had been assigned, submitted and served a tentative report. The statement as to the contents of said report is substantially correct. The remainder of the allegations of said paragraph is denied.

17

Answering paragraph 25 of said bill, intervenor admits the proceedings came on to be argued before the entire Interstate Commerce Commission on February 3, 1932; were argued on that date as stated in said paragraph.

[fol. 352] 18

Answering paragraph 26 of said bill, intervenor admits that the Interstate Commerce Commission on July 5, 1932 rendered its report and order in said proceeding, copy of which is set out as Exhibit A to the said bill. The contents of said report are shown by the report itself. The Commission did find that the Cummer scale of rates was and is and for the future would be unjustly discriminatory against interstate commerce and directed the removal of said discrimination by putting into effect a scale of rates which are the same, mile for mile, as the interstate scale of rates prescribed by the Commission for the movement of logs between Florida and Georgia. The conclusions of the Commission were supported by an intermediate findings, all of which are set out in said report. Said findings of the Commission are clear and unambiguous. The findings contained in said report were sufficient in all respects to sustain the Commission's order.

19

The allegations of paragraph 27 of said bill are admitted by intervenor. The rates prescribed by said order of July 5, 1932 are not now in effect. They will in due course go into effect September 15, 1932. The order speaks for itself.

[fol. 353] 20

The allegations of paragraph 28 of the bill are admitted by the intervenor. The order which was entered fixing the effective date of the order of July 5, 1932 as September 15, 1932 was not one which required notice or hearing on the

part of the Commission. The original order was made effective at once. The amendment thereto moved forward that effective date forty-seven (47) days from the date of the amending order which was July 28, 1932.

21

Answering paragraph 29 of the bill, intervenor admits that the petitioners filed a petition for reargument and reconsideration and that the same was denied by the Interstate Commerce Commission; and that certain other intervenors filed a like petition which was denied; that certain of the parties at interest filed a petition to postpone the effective date of the order of the Interstate Commission and that was denied.

22

Answering paragraph 30 of the bill, intervenor says that the allegations contained therein are statements of conclusions of law which this intervenor is not called upon to answer.

[fol. 354] 23

Answering paragraph 31 of said bill, intervenor denies the allegations thereof.

24

Answering paragraph 32 of said bill, this intervenor says that each and every allegation of each and every subpara-ph thereof is denied except as hereinafter stated.

Answering each subparagraph this intervenor says:

I. The facts in the record of this case before the Interstate Commerce Commission show that the Cummer scale of rates was unjust and unreasonable and that it was insufficient to pay a fair proportionate share of the cost of maintaining an adequate railway system.

II. The findings of the Interstate Commission are in exact accord with the Wisconsin case reported in 257 U. S. at page 563, and with the many case- which follow it; and in accordance with the rules laid down by the Supreme Court of the United States when this particular case was before that Court in the case of Florida v. United States, 282 U. S. 194, especially at pages 210 and 211.

[fol. 355] III. There was no conflict of evidence before the Interstate Commission as to the relation of the Cummer scale of rates to many other rates including the rates on interstate shipments of logs from points in Florida to points in Georgia where the circumstances and conditions were substantially the same; nor was there any conflict as to the relation of the Cummer scale of rates to the rates on logs in other territories served by the Atlantic Coast Line; nor as to its relation to the rates on the same kind of logs over the Seaboard Air Line Railway and the Georgia and Florida Railway in the State of Florida; nor was there any controversy as to the relation of the Cummer scale of rates to the rates on other products having similar transportation characteristics. The rates under the Cummer scale are less than half of the rates under the interstate scale fixed by the Commission for movement of logs between Florida and Georgia; they are from one-third to one-half of the rates fixed on brick, lime, cement, cullet and other like things.

There was much evidence given before the Interstate Commission as to this relationship by this intervenor and by the Georgia Public Service Commission. There was no evidence offered before the Commission conflicting with [fol. 356] that offered by this intervenor as to the mathematical ascertainment of the cost of handling logs intrastate in Florida, which ascertainment showed the cost of handling a car of logs to be substantially more than the revenue derived therefrom under the Cummer scale of rates.

This intervenor asserts that the evidence offered before and received by the Interstate Commission as to the unreasonableness of the Cummer scale of rates and as to its discrimination against interstate commerce was ample, conclusive and uncontradicted.

IV, V, VI, VII, and VIII. What has been said above answers each of these subparagraphs of paragraph 32 of said bill. In addition, this intervenor says that the exhibits and evidence of the witness Perrin showed the total movement of logs during the two years from February 8, 1929 to January 31, 1931 and the revenue derived therefrom. The evidence also showed the number of cars and number of tons of logs hauled for the years 1926-1930, both inclusive. It showed the total traffic in cars and tons

for and the log traffic for the years 1928, 1929 and 1930 and the per cent of log traffic to the total traffic for the system and for the State of Florida for those years. It also showed the total revenue, the log revenue and the per cent of log revenue to the total revenue for the years
fol. 357] 1928, 1929 and 1930. The per cent of log revenue to total revenue for 1928 was 1.9; in 1929 it was 1.5 and in 1930 it was 1.3; although the per cent of log traffic to total traffic in 1928 was 7.0; in 1929 5.0; and 1930 4.0.

The evidence before the Commission shows that if the Cummer scale of rates had been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic through its system, there would have been a reduction in the revenue of the Coast Line of $675,381.21.

The evidence also showed that there were 21,913,000,000 feet of pine timber standing in Florida in July 1931.

The Interstate Commerce Commission's scale of rates on logs was in effect from February 8, 1929 to January 31, 1931. During that period 18,602 carloads of logs moved intrastate in Florida producing gross freight revenues of $571,508.94. If the Cummer scale of rates had been effective the movement of those 18,602 carloads of logs under it would have been $290,283.19 less than those actually collected.

IX. The Interstate Commerce Commission found that the Atlantic Coast Line Railroad Company lost money on each carload of logs handled by it under the Cummer scale of rates, and the evidence justified and required that find-
[fol. 358] ing; and therefore this log traffic did not bear its fair proportionate share of the cost of maintaining the railway system. The Commission found this was true even before anything was taken into consideration for taxes and for return on investment.

X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, and XIX. Each of these subparagraphs of paragraph 32 is denied, and what has been said above further answers the same. The Commission not only found that the rates under the Cummer scale were unreasonable, but also found that the traffic moving under the Cummer scale does not pay its "fair proportionate share" of maintaining this intervenor's railway system. It found that

"The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south."

It then found:

"These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone."

[fol. 359] The Commission meant by that that the log traffic moving under the Cummer scale of rates did not pay the cost of moving it even before taxes and return on investment were taken into consideration.

The reasonableness or unreasonableness of the rates was not found by the Commission and then left there, but was found by the Commission as an element for use in determining whether or not that traffic to which those rates were applicable, carried its fair proportionate share of the costs.

XX, XXI, XXII, XXIII, XIV, XV, XVI, XVII, XVIII, XIX, XXX, and XXXI, Intervenor denies the allegations of each of these subparagraphs of paragraph 32, except as hereinbefore admitted or which may be herein now admitted.

This intervenor says that rate comparisons were used by the Interstate Commerce Commission; that rate comparisons were proper for it to use; that rate comparisons are used in almost every case where the reasonableness of rates is tested; that the United States Supreme Court has recognized rate comparison as the proper method of ascertaining the reasonableness of rates, and especially is this true when the Interstate Commission makes an interstate rate for the same commodity in the same territory.

[fol. 360] The Commission did give effect to system revenue returns but it did so after it had at great length and with great care ascertained that the costs per unit in Florida are higher than the average for the entire road or system including Florida. It states that the costs per unit in

Florida do not include the cost of transporting non-revenue or company freight and do not include anything for joint facility and equipment rents. The Commission found:

"But since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida."

The Commission in making its findings, did not give effect to any matter or thing that was not in evidence in this case.

XXXII. The Supreme Court of the United States in the case before it reported in 282 U. S. held it was not necessary that there be an application to the Florida Railroad Commission. Besides, the Florida Railroad Commission, one of the petitioners in this cause, has been engaged in this litigation before the Commission and before the courts trying to sustain the Cummer scale of rates, maintaining [fol. 361] it was just and proper, for more than six years. To have applied to it would have been perfectly useless.

XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, and XXXIX. Each of these subparagraphs of paragraph 32 is denied and what has been already said above further answers each of them.

25

Answering paragraph 33 of said bill, this intervenor admits that there were and have been and are now situated in close proximity to the railroad lines, many millions of feet of standing and uncut timber. This timber will run into billions of feet and that it has large value. If logs from said timber should move over the Atlantic Coast Line Railroad Company under the Cummer scale of rates, the aggregate loss to the Coast Line Company would be so great as to impair, if not destroy, its effectiveness as an instrument of commerce. The pine timber in Florida, because of the favorable soil and climatic conditions, reproduces itself with great rapidity; that is, with a rapidity greater than in nearly any other part of the United States and if that timber should continue to move under the Cummer scale of rates, the aggregate loss to Atlantic Coast Line Railroad Company would reach such great sums as

to be almost beyond estimate and would certainly work destruction to this intervenor as a common carrier by rail. [fol. 362] The other allegations of paragraph 33 of said bill are irrelevant and immaterial. The mills referred to in said paragraph were located at Tidewater, the timber once being about 169 miles from the point where the logs were turned over to this intervenor for hauling. The location of the mills so far from the timber was uneconomical to both the mill owners and to the carrier. The rates under the Cummer scale did not produce to the Coast Line a reward equal to the cost of rendering the service. The location of the mills so far from the timber required an outlay for transportation which was uneconomical to the mill owner.

All of the matters mentioned in this paragraph 33 were considered in the original hearing and by this Court in the previous hearing. This court dealt with that subject in the ninth paragraph of its decision rendered on January 17, 1929, reported in 30 Fed. (2) 116-121, which is referred to.

26

Answering paragraph 34 of said bill, this intervenor says that the allegations of said paragraph are unquestionably pleaded not as facts but simply as conclusions of law. The law as pleaded, to-wit: Section 1, Article 3 of the Constitution of the United States, deals with nothing but the [fol. 363] establishment of a judicial system. The Tenth Amendment which is referred to simply provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively or to the people.

No conflict with either of those provisions has been brought about by the Interstate Commerce Commission in this proceeding.

27

Intervenor respectfully avers that this cause has been pending before the Interstate Commerce Commission and the courts for more than six years. The Interstate Commission has twice found that the rates under the Cummer scale are unjust and unreasonable. It has twice found that they are discriminatory against interstate commerce. Its

first finding was sustained by this court. The judgment of this court was set aside by the Supreme Court of the United States because the Interstate Commission did not make sufficient intermediate findings. It was not set aside because of lack of evidence.

After that the cause was reopened before the Interstate Commission and was tried again practically de novo, although all of the evidence in the previous case was before the Commission. The Commission reaffirmed its previous finding that the rates under the Cummer scale were unjust and unreasonable. It made intermediate findings in great [fol. 364] detail, some of which have been referred to herein and all of which are set out in the Commission's report of July 5, 1932.

The Commission found there was an interference with the accomplishment of the purpose of Congress because of a disparity of intrastate rates as compared with interstate rates and it proceeded to end that disparity by directly removing it; and it was specifically authorized so to do in the case of Florida v. United States, 282 U. S. at page 211, and it has been authorized so to do in many other cases by the Supreme Court of the United States, especially in the Wisconsin case and the New York Passenger case, both of which are referred to and approved by the Supreme Court in the Florida case which was the appeal to the Supreme Court from this Court in this particular case.

28

Intervenor avers that the Interstate Commerce Commission has carefully considered this subject and all of the evidence offered, and in compliance with the law has made its findings that the rates under the Cummer scale are unreasonable and discriminatory against interstate commerce; that they did not bear their fair proportionate share of the cost of operation and maintenance; that they did not pay the cost of rendering the service required to be rendered; all of which was amply justified and required by the evidence in this case.

[fol. 365] Wherefore, this intervenor respectfully prays that the prayers of petitioners be denied and that the order of the Interstate Commerce Commission complained of in

this cause be not enjoined but that the same be allowed to go into effect in due course.

Respectfully submitted, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

[fol. 366] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 367] [File endorsement omitted.]

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[fol. 368] IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Sept. 14, 1932

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs 1, 2, and 3 of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

II

Answering paragraphs 4 to 11, both inclusive, of the bill of complaint, the Commission admits that Division 4 of the Commission made and entered the report and order dated August 2, 1928, referred to in paragraph 11, in a proceeding entitled Georgia Public Service Commission v. [fol. 369] Atlantic Coast Line Railroad Company, Docket No. 18364, 146 I. C. C. 717, and the Commission refers the

court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which said report and order were based.

III

Answering paragraph 12 of the bill of complaint, the Commission admits that the allegations therein contained are true.

IV

Answering paragraphs 13 to 16, both inclusive, of the bill of complaint, the Commission admits that bills were filed in this court to enjoin, set aside, and annul the aforesaid order of August 2, 1928, and that the court, specially constituted as required by statute, sustained the validity of said order and entered a decree dismissing the bills for want of equity. The opinions of the court are reported as State of Florida v. United States, 30 F. (2d) 116 and 31 F. (2d) 580.

V

Answering paragraphs 17 and 18 of the bill of complaint, the Commission admits that upon appeal to the Supreme Court of the United States the aforesaid decree of this court was reversed, Florida v. United States, 282 U. S. 194.

VI

Answering paragraphs 19 and 20 of the bill of complaint, the Commission admits that shortly after the decision of the Supreme Court annulling the aforesaid order of August 2, 1928, the Commission, upon petitions filed by complainant and defendant in the aforesaid proceeding, Docket No. 18364, reopened said proceeding, and thereafter issued [fol. 370] a report and order, dated July 5, 1932, a copy of which report and order are attached to and made a part of the bill of complaint as Exhibit A; that said report is published at 186 I. C. C. 157, and the Commission refers the court to said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the further proceedings before the Commission upon which said report

and order were, and are, based; that at hearings in said proceeding after it was reopened as aforesaid a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of July 5, 1932; that said report and order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and upon the evidence submitted at the original hearings in said proceeding, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

VII

Answering paragraph 21 of the bill of complaint, the Commission admits that the allegations therein contained are true.

VIII

Answering paragraph 22 of the bill of complaint, the Commission admits, as stated in its report on rehearing, 186 I. C. C. 157, at page 159, that at the further hearing the Florida interveners moved that the complaint should [fol. 371] be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, and that, for the reasons stated in said report, said motion to dismiss was denied.

IX

Answering paragraph 23 of the bill of complaint, the Commission admits that certain motions were made in the proceeding upon rehearing to require the Atlantic Coast Line Railroad Company to produce information showing the total volume of the Florida log traffic for a number of years prior to the date of the Commission's original order of August 2, 1928, and that the Commission denied said motions.

Further answering said paragraph 23 the Commission alleges that the findings and conclusions in said report of July 5, 1932, were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

X

Answering paragraph 24 of the bill of complaint, the Commission admits that after the final hearings in said proceeding the Commission's examiners made and issued a proposed report which was served upon the parties but alleges that said proposed report did not constitute the report of the Commission, and that the conclusions of the Commission differed in part from those of the examiners.

XI

Answering paragraph 25 of the bill of complaint, the Commission admits that the allegations therein contained are true.

XII

Answering paragraphs 26 and 27 of the bill of complaint, the Commission neither admits nor denies the allegations in said paragraph relating to the contents of the Commis- [fol. 372] sion's report of July 5, 1932, but refers the court to the text of said report itself and to the Commission's order of the same date.

XIII

Answering paragraph 28 of the bill of complaint, the Commission admits that on July 28, 1932, it issued a supplemental order in said proceeding, a copy of which is attached to the bill of complaint and made a part thereof as Exhibit B.

XIV

Answering paragraph 29 of the bill of complaint, the Commission admits that the allegations therein contained are true.

XV

Answering paragraphs 30 and 31 of the bill of complaint, the Commission denies that said report and order, as amended as aforesaid, are either arbitrary or unreasonable

or beyond the power of the Commission or invalid or unlawful.

XVI

Answering paragraph 32 of the bill of complaint, the Commission denies that said order of July 5, 1932, is unlawful for the reasons or for any of the reasons set forth in said paragraph.

Further answering said paragraph 32, the Commission alleges that in making said report and order of July 5, 1932, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel.

The Commission further alleges that said order of July 5, 1932, was not made or entered either arbitrarily or unjustly; or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did [fol. 373] not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all of the allegations to the contrary contained in the bill of complaint.

XVII

Answering paragraph 33 of the bill of complaint, the Commission denies the allegations contained in said paragraph, except the allegations that there have been and are situate in proximity to the railroad lines of said Atlantic Coast Line Railroad Company in the State of Florida many millions of feet of standing and uncut timber, and that at the time of the filing of said complaint by said Georgia Public Service Commission many persons and corporations were engaged in cutting said timber and transporting the logs so produced over the aforesaid lines of the Atlantic Coast Line Railroad Company a distance of 170 miles or less to lumber mills located in the State of Florida, and these allegations the Commission admits are true. The Commission particularly denies that the said order of July 5, 1932, will cause either irreparable damage or irreparable injury, as alleged in paragraph 33 of the bill of complaint, unless said order of July 5, 1932, is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report and order of July 5, 1932, which said report and order are hereby referred to and made a part hereof.

[fol. 374] All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, of Counsel.

*Duly sworn to by Patrick J. Farrell. Jurat omitted in printing.*

[fol. 375] [File endorsement omitted.]

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[fol. 376] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed Sept. 14, 1932

This cause came on to be heard this September 14th A. D. 1932, before the Honorable Samuel H. Sibley, Circuit Judge, the Honorable E. Marvin Underwood, District Judge, and the Honorable Louie W. Strum, District Judge, and it appearing to the Court and the Court finding that the bill of complaint herein was filed in this cause on to-wit, September 9th, 1932, the purpose whereof was and is to enjoin, restrain and annul an order of the Interstate Commerce Commission entered July 5th, 1932 as amended by said Interstate Commerce Commission July 28th, 1932, insofar as relates to intrastate rates in Florida, said order as amended as aforesaid having been entered by said Interstate Commerce Commission in that certain proceeding entitled Georgia Public Service Commission, complainant, versus Atlantic Coast Line Railroad Company, defendant,

and being Interstate Commerce Commission Docket 18364, and it further appearing to the Court and the Court finding that in due course the Honorable E. Marvin Underwood, Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, did duly call to his assistance the Honorable Samuel H. Sibley, Circuit Judge, and the Honorable Louie W. Strum, District Judge, pursuant to Acts of Congress in such cases made and provided, [fol. 377] upon the request of the complainants in this cause, and the said cause was duly and regularly set by and before said Court constituted of said three Judges as aforesaid, to be heard on September 14th, 1932 at 10:00 o'clock A. M. upon application of the complainants for a temporary stay or suspension of said order of said Interstate Commerce Commission, and for a temporary restraining order and injunction restraining and enjoining the said order and the effect thereof, and it further appearing to the court and the Court finding that there are important questions of law and fact to be considered and determined in said cause and that unless the said order be temporarily enjoined and restrained that irreparable injury will result to the interested shippers within the State of Florida, and it also appearing from the sworn bill of complaint and from the affidavits of L. F. Shore and Ralph Hunt filed in said cause and submitted to this Court that irreparable damage will result to petitioners and the shippers of logs in Florida in that the operations of divers manufacturers of lumber will be substantially hindered delayed, and embarrassed and such manufacturers subjected to substantial loss and damage on that account, it is thereupon,

Considered, ordered and adjudged by the Court that the said order of the Interstate Commerce Commission dated July 5th, 1932, as amended by said order of July 28, 1932, as aforesaid, insofar as the same relates to intrastate rates in Florida, be and the same hereby is temporarily stayed and suspended until sixty (60) days from the date hereof or until the further order of the Court.

[fol. 378] In open court this the 14th day of September, A. D. 1932, at 6.07 o'clock p. m.

Samuel H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

[fol. 379] [File endorsement omitted.]

[fol. 380] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Sept. 22, 1932

United States, one of the defendants in the above-entitled case, for answer to the bill of complaint filed therein against it answers and says:

I

United States admits the truth of the opening paragraph and of paragraphs 1, 2, 3, 4 and 5 of the bill, with these exceptions: (1) it says that the conclusion stated in the second subdivision of said paragraph 4 with respect to the laws of Florida is irrelevant and immaterial, and it neither admits nor denies the same; and (2) it says that the last subdivision of said paragraph 5 is also irrelevant and immaterial, and it neither admits nor denies the same.

[fol. 381] II

United States admits that the allegations stated and contained in paragraphs 6, 7, 8, 9, 10, 11 and 12 of the bill are true, with this exception: it denies that the second subdivision of said paragraph 10 contains a full or accurate statement of the averments of the Georgia Public Service Commission in said proceedings, or of the evidence introduced by it in said proceedings, and respectfully refers the Court to said complaint of said Georgia Commission and to its evidence in said proceedings, both of which have been introduced and now are a part of the record of evidence before this Court.

III

United States admits that the matters and things alleged in paragraphs 13, 14, 15, 16, 17 and 18 of the bill are substantially true.

IV

Answering paragraph 19 of the bill, United States admits that motions were filed by the Georgia Public Service

Commission and the Atlantic Coast Line Railroad Company with the Interstate Commerce Commission to reopen the proceedings before it after the Supreme Court had reversed the decree of this Court, but United States denies that said paragraph contains a full or accurate description of the allegations of said motions, and respectfully refers the Court to the full, complete text of said motions which are now a part of the record of evidence filed in this Court.

[fol. 382]

V

Answering paragraph 20, United States admits that petitioners filed replies to said motions substantially as alleged therein, and that on April 6, 1931, the Interstate Commerce Commission reopened said proceedings for further hearing.

VI

United States admits the allegations of paragraph 21 of the bill.

VII

Answering paragraphs 22 and 23 of the bill, United States denies the allegations thereof, except that it admits that the motions therein described were made to dismiss a portion of the complaint and to require the Atlantic Coast Line Railroad Company to produce certain statements with respect to the revenues produced from the transportation of logs in Florida, and that said Interstate Commerce Commission denied said motions and refused to require said Railroad Company to furnish said information; but United States denies that there is no evidence in the record before the Commission showing the amount of revenue received by said Railroad Company from its Florida intrastate traffic.

VIII

Answering paragraph 24, United States admits that the Commission's examiners prepared and served upon the parties a proposed report, but denies that any of the allegations in said paragraph 24 are relevant or material to the [fol. 383] validity of the Commission's order, for the reason that the examiners' proposed report is not the official act or order of the Commission and is not binding upon it or the parties to the proceeding.

IX

United States admits the allegations of paragraph 25.

X

Answering paragraph 26, United States admits that on July 5, 1932, the Interstate Commerce Commission rendered its report and order in said proceeding, and that a true copy thereof is attached to the bill as Exhibit A, but for answer to the remaining allegations of said paragraph, United States denies that they contain a full, accurate or complete statement of the matters and things set forth and stated in said report, and respectfully refers the Court to the full text of said report, attached as Exhibit A to the bill. United States denies each and every allegation and implication made and contained in or arising from the last sentence of said paragraph 26 of the bill.

XI

United States admits the allegations made and contained in paragraphs 27, 28, 29 and 30 of the bill.

XII

United States denies the allegations made and contained [fol. 384] in paragraphs 31, 32 and 33 of the bill, and denies that said order issued by the Commission on July 5, 1932, is invalid or unlawful for the reasons set forth in said paragraph 32, or for any of them, or for any other reason; and particularly denies the allegation in paragraph 33 that petitioners will suffer irreparable or other legal damage or injury if said order be not enjoined.

XIII

Answering paragraph 34 of the bill of complaint, United States admits that this Court is entitled to determine its own jurisdiction, and to determine from the facts in the record before the Commission whether the proceeding conducted by the Commission was one within the Commission's statutory authority, but United States denies that this Court has authority and that petitioners have a right to a trial denovo upon the question whether there was such a discrimination against interstate commerce caused by the

Florida intrastate rates as to justify the Interstate Commerce Commission in conducting the proceeding, and further denies that this Court is empowered to make any determination of fact, or to hear evidence with respect to the existence of discrimination.

Except as herein expressly admitted, United States denies each and every allegation made and contained in the bill of complaint, and each of the several paragraphs thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the peti- [fol. 385] tioners, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney. John Lord O'Brian, the Assistant to the Attorney General.

[fol. 386] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 387] [File endorsement omitted.]

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[fol. 388] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 690

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable Judges of the District Court in and for the Northern District of Georgia, in Chancery Sitting:

State of Florida by Cary D. Landis, its Attorney-General, and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass as and constituting the Florida Railroad Commission by T. T. Turnbull, Special Counsel designated [fol. 389] by them, with leave of Court first had and obtained, bring this their Supplemental Bill of Complaint

herein against the United States of America and Interstate Commerce Commission and Atlantic Coast Line Railroad Company, defendants. Thereupon your orators complain and say:

1. That heretofore, to-wit: on September 9th, 1932, your orators filed in this cause their bill of complaint hereafter called the "original bill" against United States of America and Interstate Commerce Commission, defendants herein, wherein and whereby they sought to annul, set aside and enjoin that part of the order entered by said Interstate Commerce Commission in its Docket No. 18364, dated July 5, 1932, as amended July 28, 1932, wherein and whereby the said Interstate Commerce Commission attempted to invade the domain of the State of Florida and to disestablish the scale of lawful rates in force and effect for the transportation of logs, except walnut, cherry and cedar, in carloads, minimum weight 50,000 pounds, excess in proportion (herein called the Cummer Scale) upon the lines of the Atlantic Coast Line Railroad Company in intrastate Commerce in Florida and to require said Atlantic Coast Line Railroad Company, a common carrier and subject to the jurisdiction and regulation of the State of Florida, to establish, put in force and maintain a certain other scale of rates for the transportation of such logs prescribed in and by the terms of said order.

[fol. 390] The said cause came on to be heard in said City of Atlanta before the Honorable Samuel H. Sibley, United States Circuit Judge, and the Honorable Louie W. Strum and the Honorable E. Marvin Underwood, United States District Judges, on motion of your orators after due notice to the said defendants for an order of this Court staying order of the Interstate Commerce Commission pending this proceeding pursuant to the laws of Congress in such cases made and provided; that at such hearing the said Atlantic Coast Line Railroad Company by order of this Court was permitted to intervene in said cause and did intervene therein and filed its answer to the original bill of complaint; that thereafter answers were duly filed by the defendants, United States of America and Interstate Commerce Commission, and certified copies of the proceedings had by and before the said Interstate Commerce Com-

mission in said docket No. 18364 were duly filed in evidence in said proceeding; and that on, to-wit: September 14, 1932, this Court did make and enter in said cause its order wherein and whereby the said order of the Interstate Commerce Commission and the effect thereof was duly stayed until further order of the Court, but not to exceed sixty days from the date thereof. That no final judgment or [fol. 391] decree of this Court has been entered in nor have any issues in the original suit been determined by this Court.

2. That since the time of the filing of the original bill of complaint herein your orators have learned of the recent publication of reduced scales of rates for the transportation of logs in fourteen different Southeastern and Southwestern States over the lines of twenty-one different railroad carriers operating in and between said States. That nearly all of said reduced scales of rates (hereinafter called the Newly Reduced Rates) were published by said railroads after July 5, 1932, (the date of the said order of the Interstate Commerce Commission herein involved) and said Interstate Commerce Commission has permitted said scales of rates so published to become effective.

That the said railroads so publishing said Newly Reduced Rates are as follows:

Atlantic Coast Line Railroad.
Central of Georgia Railway.
Chicago, Rock Island & Pacific Railway.
Columbus & Greenville Railroad.
Georgia and Florida Railroad.
Gulf, Mobile & Northern Railroad.
Illinois Central Railroad.
Louisville & Nashville Railroad.
Missouri Pacific Railroad.
Mobile & Ohio Railroad.
Nashville, Chattanooga & St. Louis Railway.
New Orleans & North Eastern Railroad.
Norfolk & Southern Railroad.
Savannah & Atlanta Railway.
Seaboard Air Line Railway.
Southern Railway.
St. Louis-San Francisco Railway.

St. Louis-South Western Railway.
Tennessee, Alabama & Georgia Railway.
[fol. 392] Western Railway of Alabama.
Yazoo & Mississippi Valley Railroad.

That the Southeastern and Southwestern States within and between which said Newly Reduced Rates are applicable in both interstate and intrastate commerce are as follows:

Florida.
Georgia.
South Carolina.
North Carolina.
Virginia.
Alabama.
Mississippi.
Louisiana.
Tennessee.
Kentucky.
Missouri.
Arkansas.
Oklahoma.
Texas.

3. That said Newly Reduced Rates were and are (with the exceptions hereinafter noted) a mileage scale expressed in lump sum terms per carload, regardless of weight, and were and are upon the basis hereinafter set forth and were and are published in the tariffs hereinafter described by the carriers hereinafter named (said Newly Reduced Rates being divided into "Schedule 1", "Schedule 2", "Schedule 3" and "Schedule 4" for reasons hereinafter appearing) viz.

[fol. 393] Schedule I

Rates

| Distance | Rate per car regardless of weight |
|---|---|
| 25 miles and less | $12.00 |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 20.00 |

Tariff Number, by What Railroad Issued, and Application of Said Rates

| I. C. C. Tariff No. | Issued by | Application |
|---|---|---|
| B-860 | M. & O. R. R. | From stations on the M. & O. R. R. to Columbus, Corinth, Miss., Humbolt, Jackson, Tenn., Meridian, Miss., Mobile, Ala., Wickliffe, Ky., and Whistler, Ala. |
| 7789 | I. C. R. R. | From stations on the I. C. R. R. to Corinth, Miss., Dyersburg, Tenn., Fernwood, Granada, Jackson, Miss., Jackson, Tenn., Mccomb, Pickens, Miss., Ponchatula, La., Water Valley, Miss. |
| 7810 | | From stations on the Y. & M. V. R. R. to Charleston, Clarksdale, Miss., Denham Springs, La., Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Philips, Stevenson, Tehula, Trotters Point, Vicksburg and Yazoo City, Miss. |
| 3284-A | N. C. & St. L. Ry. | Applies on interstate traffic between points on the N. C. & St. L. Ry. |
| Rate issue 41296 | N. C. & St. L. Ry. | Applies on Tennessee State Traffic between points on the N. C. & St. L. Ry. |
| A-10425 Supp. 5 | Sou. Ry. | From points in Alabama, Georgia and Tennessee to Chattanooga, Tenn. (Note 1). |

| Rate issue | Issued by | Application |
|---|---|---|
| 9019 | St. L. S. F. Ry. | Between stations on the St. L. S. F. Ry. in Alabama, Florida and Mississippi (Note 2). |
| *2848 | Cent. of G. Ry. | Between stations on Cent. of Ga. Ry. and Montgomery, Ala. (Note 3). |

NOTE 1.—Sou. Ry.—25 miles and less, 50 cents per car more than above scale; all other distances the same as above scale.

NOTE 2.—St. L. S. F. Ry.—100 miles and over 75, $2.50 per car more than above scale; all other distances the same as above scale.

NOTE 3.—Cent. of Ga. Ry.—$2.50 per car more than above scale for all distances.

[fol. 394] Schedule 2

Rates

| Distance | Rate per car regardless of weight |
|---|---|
| 25 miles and less | $12.00 |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 22.50 |

Tariff Number, by What Railroad Issues, and Application of Said Rates

| I. C. C. Tariff No. | Issued by | Application |
|---|---|---|
| A-9212 | Mo. Pac. R. R. | Between points on Mo. Pac. R. R. in Arkansas and Louisiana, Missouri, Oklahoma and Texas. |

* This tariff (No. 2848) was republished by I. C. C. No. 2867 G. F. O. Special 140-A, effective intrastate Jan. 23, 1933, which extends application of rates to shipments to Dothan, Ala., from points between Eagle Pond, Ga., to Florala, Ala., inclusive of Lakewood, Fla.

| I. C. C. Tariff No. | Issued by | Application |
|---|---|---|
| C-12130 | C. R. I. & P. Ry. | Between points on the C. R. I. & P. Ry. in Arkansas and Louisiana. |
| 4676 | St. L. S. W. Ry. | Between points on the St. L. S. W. Ry. in Arkansas, Louisiana and Missouri. (Applies on cars of 90,000 lbs. or less, excess loads to be charged proportionately). |
| 9346 | St. L. S. F. Ry. | Between points on the St. L. S. F. Ry. in Arkansas and between points in Arkansas and points in Missouri. |

[fol. 395] Schedule 3

Rates

| Distance | Rate per car regardless of weight |
|---|---|
| 25 miles and less | $12.00 |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 20.00 |

Tariff Number, by What Railroad Issued, and Application of Said Rates

| I. C. C. Tariff No. | Supplement No. | Issued by | Application |
|---|---|---|---|
| A-10472 | | Sou. Ry. | From Sou. Ry., A. G. S. and C. N. O. & T. P. stations in Ga. and Ala. to Chattanooga (Note 1) and from Sou. Ry. stations in Miss., Ala. & Tenn. to Corinth, Miss. |
| A-659 | 115 | Glenn for T. A. & G. Ry. | From T. A. & G. stations to Chattanooga and Gadsden, Ala. (Note 1). |

| I. C. C. Tariff No. | Supplement No. | Issued by | Application |
|---|---|---|---|
| A-10448 | 2 | Sou. Ry. | From Sou. Ry. stations between Memphis, Tenn., and Corinth, Miss., to Memphis, Tenn. |
| A-10425 | 6 | Sou. Ry. | From all Sou. Ry. stations in Ala. to Mobile and Selma, and from Sou. Ry. stations in Ala. and from A. G. A. stations in Ala. and Miss. to York, Ala. (Note 2). |
| 7789 | | Ill. Cent. R. R. | From stations on the G. & S. I. to Jackson, Miss. and Laurel, Miss. |
| 3101 | | N. O. & N. E. R. R. | From N. O. & N. E. stations to Laurel, Miss. (Note 3). |
| 36 | 6 and 8 | Columbus & Greenville R. R. | From all stations on the C. & G. to Columbus, Greenville, Grenada, and West Point, Miss. (Note 4). |
| [fol. 396] | | | |
| A-7638 | | S. A. L. Ry. | From S. A. L. stations in Ala. between Omaha, Ga., and Montgomery, Ala. (Note 2). |
| A-129 | | W. Ry. of Ala. | From all stations on W. R. of A. to Montgomery, Ala., and Selma, Ala. (Note 2). |
| 1137 | | G. M. & N. R. R. | Between all G. M. & N. stations intrastate in Mississippi (Note 5). |

| I. C. C. tariff No. | Supplement No. | Issued by | Application |
|---|---|---|---|
| *A-10467 | | Sou. Ry. | To Charleston, S. C. from Augusta, Ga. and Edgefield, Park Hill, Baynham, Columbia, Hardeeville, Denmark, Bath, Kingville, May, Orangeburg, and Sumter, S. C. (Note 6). |

NOTE 1.—Sou. Ry. rates to Chattanooga and Gadsden—25 miles and less 50 cents per car more than above scale, all other distances same as above scale.

NOTE 2.—S. A. L. Ry. rates to Montgomery, W. Ry. of Ala. rates to Montgomery and Selma, Sou. Ry. rates to Mobile, Selma and York—$2.50 per car more than above scale for all distances.

NOTE 3.—N. O. & N. E. R. R. rates to Laurel, Miss.—25 miles and less are 50 cents more than above scale, and 100 miles and over 75 miles are $2.50 more than above scale, other distances same as above scale.

NOTE 4.—Columbus & Greenville R. R. scale extends over 100 miles as follows:

| | |
|---|---|
| 125 miles and over 100 miles | $22.50 per car |
| 150 miles and over 125 miles | 25.00 per car |
| 170 miles and over 150 miles | 27.50 per car |

NOTE 5.—G. M. & N. R. R. rates—100 miles and over 75 miles $2.50 per car more than scale, all lesser distances same as above scale.

NOTE 6.—This Sou. Ry. scale to Charleston is not a per car, regardless of weight, scale. It is published on a basis of cents per hundred pounds as follows:

---

*Rates on conduits, cross arms, crossties, fence posts, lumber, paving blocks, piling, poles and timber.

| | Per hundred pounds |
|---|---|
| From Augusta, Ga., and from Edgefield, Park Hill, Columbia, Hardeeville, Kingville and Sumter, S. C. to Charleston, S. C | 2 cents |
| From Baynham, Bath and May, S. C. to Charleston, S. C | 1½ cents |
| From Denmark and Orangeburg, S. C. to Charleston, S. C | 1 cent |

[fol. 397] Schedule 4

Rates, Tariff Numbers, by What Railroads Issued, and Application of Said Rates

Louisville & Nashville Railroad

Tariff I. C. C. No. 16022, Supp. 19

| Rate | Per car regardless of weight | Application |
|---|---|---|
| 25 miles and less | $12.00 | Over entire L. & N. system, except on Alabama and Florida intrastate traffic, and except on traffic from, to, or between points in Illinois, Indiana, Missouri and/or Ohio. |
| 50 miles and over 25 miles | 15.00 | |
| 75 miles and over 50 miles | 17.50 | |
| 100 miles and over 75 miles | 20.00 | |

From Linsey, Ky. to Knoxville, Tenn. (140 miles), $29.50 per car, regardless of weight.

Atlantic Coast Line Railroad

Tariff I. C. C. No. B-2745 (Rule 127)

Rates on Crossarms, Crossties, Lumber, Piling, Poles and Timber not Otherwise Specified

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 100 miles and under | 2½ | From A. C. L. stations to Montgomery, Ala. |
| 125 miles and over 100 miles | 3½ | |
| 175 miles and over 125 miles | 4½ | |

[fol. 398] Atlantic Coast Line Railroad

Tariff I. C. C. No. B-2745, Supp. 1

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| To Charleston from Gourdin | 1 | To Charleston from, following A. C. L. stations in South Carolina, Gourdin *(51) Florence to Lanes (102), Sumter (94), Gamble to Carpon (56), Dillon to Florence Transfer (132), Mullins to Evansdale, (130), Darlington to Haynesworth (110), Berry to Clio (128), Currans to Nix (104), Ebenezer to Ryttenburg (95), Bennettsville to Lides (134); Maxie to Noah (138), Wisacky to Lucknow (115), Floyd to Perkins (116), Auburn and Hartsville (122). |
| To Charleston from: Florence to Lanes, Sumter and Gamble to Carpon | 1½ | |
| To Charleston from: Dillon to Florence Transfer, Mullins to Evansdale, Darlington to Haynesworth, Berry to Clio, Currans to Nix, Ebenezer to Ryttenburg | 2½ | |
| To Charleston from: Bennettsville to Lides, Maxie to Noah, Wisacky to Lucknow, Floyd to Perkins, Auburn and Hartsville | 3 | |

Central of Georgia Railroad

Tariff I. C. C. No. 2851

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 50 miles and under | 2½ | From C. of G. stations to Augusta and Waynesboro, Ga. |
| 75 miles and over 50 miles | 3 | |
| 100 miles and over 75 miles | 3½ | |

*Distance to Charleston in parenthesis.

[fol. 399] Norfolk & Southern Railroad

Tariff I. C. C. No. A-760

Rate on Lumber, Piles, and Other Forest Products

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 50 miles and under | 3 | From N. & S. stations to Norfolk, Va. |
| 100 miles and over 50 miles | 4 | |
| 150 miles and over 100 miles | 5 | |
| 200 miles and over 150 miles | 6 | |

Georgia & Florida Railroad Company

Tariff I. C. C. No. 558

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 50 miles and under | 2½ | Over entire line of G. & F. R. R. |
| 75 miles and over 50 miles | 3 | |
| 100 miles and over 75 miles | 3½ | |
| 160 miles and over 100 miles | 4 | |
| 200 miles and over 160 miles | 4½ | |

Savannah & Atlanta Railway

Tariff I. C. C. No. 115

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 25 miles and under | 2½ | From S. & A. Ry. stations to Warrenton, Sardis and Newington, Ga. |
| 50 miles and over 25 miles | 3 | |
| 75 miles and over 50 miles | 3½ | |

Seaboard Air Line Railway

Tariff I. C. C. No. A-7528, Supp. 8

| Rate | Application |
|---|---|
| $2.50 per 1,000 feet Doyle Scale (Minimum carload of 4,000 feet required—approximately 48,000 lbs.). | From S. A. L. Ry. stations between and including Branchville, Va., and Littleton, N. C. *(44.7) to Boykins, Va., and from S. A. L. Ry. stations between and including Severn, N. C. and Lewiston, N. C. (35) to Boykins, Va. |

*Distance to Boykins in parenthesis.

[fol. 400] Seaboard Air Line Railway

Tariff I. C. C. No. A-7528, Supp. 9

| Rate | Application |
|---|---|
| 3½ cents per 100 lbs. | Fitz Siding, N. C., to Norfolk, Va. (61 miles) |

(Minimum carload of 80,000 lbs. required.)

Southern Railway

Tariff I. C. C. No. 10425, Supp. 7

| Rate | Per car regardless of weight | Application |
|---|---|---|
| 25 miles and under | $12.50 | From E. N. O. & T. P. stations to Knoxville, Tenn., from Sou. Ry. stations to Dayton, Tenn., and from Sou. Ry. stations to Fayette, Ala. |
| 50 miles and over 25 miles | 15.00 | |
| 75 miles and over 50 miles | 17.50 | |
| 100 miles and over 75 miles | 20.00 | |

4. That on, to-wit, October 12th, 1932, your orators filed with said Interstate Commerce Commission in said proceeding before it a motion to set aside the said order of said Interstate Commerce Commission and for further hearing in and reconsideration of said proceeding, and in and by said motion averred that after July 5, 1932 (the date of said order of the Interstate Commerce Commission), and prior to September 15, 1932, the date on which said order of the Interstate Commerce Commission was by its terms to become effective, at least ten railroad carriers doing business in the Southern and Southwestern territorial rate groups and operating within and between eleven different Southern and Southwestern states, including Florida, had filed with said Interstate Commerce Commission and said Commission had permitted to become effective said Newly Reduced Rates. And in and by said motion and petition for rehearing your orators set forth the rates and the railroads by which the same were issued and the application of such rates, which rates are hereinabove described in "Schedule 1" and "Schedule 2" hereof.

[fol. 401] 5. That on, to-wit, October 12th, 1932, and after the filing of said motion and petition for rehearing before said Interstate Commerce Commission your orators presented for filing in this cause a supplemental bill of complaint wherein your orators set forth said Newly Reduced Rates mentioned and described in "Schedule 1" and "Schedule 2" hereof, and in and by said supplemental bill it was further alleged that, as soon as possible after learning of said Newly Reduced Rates, your orators had filed with said Interstate Commerce Commission, said motion and petition for rehearing, and your orators prayed this Court to stay the operation and effect of said order of the Interstate Commerce Commission until said motion for rehearing should have been acted upon by said Commission, and until the further order of this Court, and that in the event said Interstate Commerce Commission should refuse to set aside its said order that this Court would decree said order to be invalid and unlawful, and enter a decree enjoining said order. That at the time of presenting said supplemental bill of complaint to this Court your orators moved this Court for leave to file the same and said motion was set for hearing on October 22, 1932, before said Court.

6. That on, to-wit, October 21, 1932, said Interstate Commerce Commission entered its order reopening the proceedings in its said Docket No. 18364, and assigned said [fol. 402] proceeding for further hearing for the purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing therein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates of the Atlantic Coast Line Railroad Company, and further suspending the operation of its said order of July 5, 1932, as amended July 28, 1932, until its further order. That thereupon, said order being brought to the attention of the Court, this Court cancelled said hearing set for October 22, 1932, upon the above mentioned motion for leave to file said supplemental bill, and no further proceedings were had in this cause.

7. That on November 21 and 22, 1932, said further hearing before said Interstate Commerce Commission, under its said Docket No. 18364, was held. That at said hearing

in said proceeding, in addition to the numerous tariffs publishing said newly reduced rates hereinabove mentioned and described in "Schedule 1" and "Schedule 2" hereof, there were filed in evidence certain other tariffs (only discovered by your orators after the filing of said motion and petition for rehearing) publishing said Newly Reduced Rates applicable in said Southern territory. That said [fol. 403] additional tariffs are hereinabove described in "Schedule 3" hereof, and were recently—in many instances after the presentation of said supplemental bill—filed with said Interstate Commerce Commission by seven railroad carriers doing business in said Southern territorial rate group and operating within and between six different Southern States and said Interstate Commerce Commission had permitted the same to become effective.

8. That thereafter, to-wit, on January 9, 1933, said Interstate Commerce Commission, in its second report on further hearing, affirmed all of the findings in its report on further hearing and by its order of January 9, 1933, in said proceeding, as amended by its order of January 19, 1933, vacated its order of October 21, 1932, and ordered that after February 25, 1933, the aforesaid order of July 5, 1932, as amended by said order of July 28, 1932, should remain in full force and effect until the further order of said Commission. That a copy of said second report on further hearing and order of January 9, 1933, and a copy of said amendatory order dated January 19, 1933, are attached hereto and marked "Exhibits A" and "B" respectively, and made by reference a part hereof.

9. That on, to-wit, February 8th, 1933, your orators filed their petition with said Interstate Commerce Commission [fol. 404] praying for further hearing in said proceeding before said Commission, a copy of said petition being hereto attached and marked "Exhibit C" and made by reference a part hereof. That, as is set forth in and by said petition for rehearing, in addition to all the tariffs hereinabove mentioned and described in "Schedule 1", "Schedule 2" and "Schedule 3" hereof publishing said Newly Reduced Rates, certain additional tariffs have been recently filed with said Interstate Commerce Commission by eight railroad carriers doing business in said Southern territorial rate group and operating within and between ten different

Southern States, and said Interstate Commerce Commission has permitted the scales of rates therein published to become effective. That said additional tariffs and the rates set forth therein are hereinabove set forth and described in "Schedule 4" hereof, save and except the rates set forth in said petition on the Atlanta, Birmingham and Coast Railroad which your orators have since learned are not applicable to logs and save and except that the Louisville & Nashville Railroad rate of $29.50 per car from Linsey, Kentucky, to Knoxville, Tennessee, was erroneously set forth in said petition to be applicable from Louisville to Knoxville.

10. That said petition for re-hearing was denied by said Commission on February 13th, 1933. That no final judgment or decree of this Court has been entered in, nor have any issues in the original suit been determined by this Court.

11. That your orators aver all and singular the matters and things averred in and by said original bill of complaint and in addition thereto, aver the following:

(a) That all of said Newly Reduced Rates hereinabove mentioned and described in "Schedule 1", "Schedule 2", "Schedule 3", and "Schedule 4", are now in effect for the transportation of logs in Southern and Southwestern territory, and said Interstate Commerce Commission has per- [fol. 405] mitted them to become effective. That in order to show the widespread application of said rates your orators have attached hereto a railroad map of the United States, which said map is marked "Exhibit D", and made by reference a part hereof. That the lines marked upon said "Exhibit D" in blue color show and represent the application of said Newly Reduced Rates upon the railroad lines of the numerous various carriers publishing the same. That said Newly Reduced Rates are now in effect on numerous railroad carriers in every State in the Southeastern territory, south of the northern boundaries of Kentucky and Virginia and east of the Mississippi River, including Florida, and on or over all or portions of the lines of every railroad of any consequence which operates in interstate commerce south of the States of Kentucky and Virginia, including the defendant, Atlantic Coast Line Railroad, and including the Louisville & Nashville Railroad which is controlled through

stock ownership by said Atlantic Coast Line Railroad, and including the Nashville, Chattanooga & St. Louis Railroad which is controlled through stock ownership by said Louisville & Nashville Railroad. That said Newly Reduced Rates are applicable in Florida in interstate commerce on and over the lines of said Louisville & Nashville Railroad and the Central of Georgia Railroad and are likewise applicable in Florida in interstate and intrastate commerce on and over the lines of the St. Louis-San Francisco Railway and the lines of the Georgia & Florida Railroad.

[fol. 406] (b) That said second report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, states that said Newly Reduced Rates in Southwestern territory (that is, west of the Mississippi River) "should expire by limitation December 21, 1932", whereas the testimony in said proceeding before said Interstate Commerce Commission shows, without contradiction, that said railroads publishing said tariffs in said territory had assented to an extension of those scales of rates throughout the year 1933, and your orators aver that tariffs have been filed with said Interstate Commerce Commission since the last hearing in said proceeding so extending said expiration date, and that said Newly Reduced Rates will be applicable in said Southwestern territory at least until December 31, 1933.

(c) That the Commer Scale is a mileage scale of rates expressed in lump sum terms per car of minimum weight of 50,000 pounds, excess in proportion; that the Newly Reduced Rates which said Interstate Commerce Commission has permitted to become effective in interstate commerce in Southeastern and Southwestern territories other than Flor-
[fol. 407] ida are almost all expressed in lump sum terms per car regardless of weight; that the capacity of cars in which logs ordinarily are loaded for transportation in Southwestern and Southeastern territories ranges from 80,000 to 100,000 pounds per car, with the privilege of overloading to the extent of 10% of such capacity. And your orators aver that shippers generally, particularly shippers of commodities such as logs, in shipping upon rates applicable to carloads regardless of weight, customarily load to the full carrying capacity of the car; and that the loading of logs of all kinds, including hardwood moving in the

Southeastern and Southwestern territories and in Florida, upon lump sum per car rates regardless of weight would substantially exceed 70,000 pounds per car, and would average from 75,000 to 85,000 pounds per car or more.

(d) That the table below compares for the hauls up to 100 miles the rates, per car of the weight mentioned, for the transportation of logs upon the Cummer Scale intrastate in Florida (Column 2); upon the Newly Reduced Rates (Column 3); and upon the scale prescribed by said Interstate Commerce Commission as aforesaid intrastate in Florida (Column 4):

[fol. 408]

| (1) Hauls in miles | (2) Cummer scale | (3) Newly reduced rates in S. E. Territory | (4) Scale fixed by I. C. C. |
|---|---|---|---|
| **Computed on Carload of 70,000 Pounds** | | | |
| 25 miles | $11.97 | $12.00 | $24.50 |
| 50 miles | 14.70 | 15.00 | 31.50 |
| 75 miles | 16.10 | 17.50 | 38.50 |
| 100 miles | 18.20 | 20.00 | 42.00 |
| **Computed on Carload of 75,000 Pounds** | | | |
| 25 miles | 12.82 | 12.00 | 26.25 |
| 50 miles | 15.75 | 15.00 | 33.75 |
| 75 miles | 17.25 | 17.50 | 41.25 |
| 100 miles | 19.50 | 20.00 | 45.00 |
| **Computed on Carload of 80,000 Pounds** | | | |
| 25 miles | 13.68 | 12.00 | 28.00 |
| 50 miles | 16.80 | 15.00 | 36.00 |
| 75 miles | 18.40 | 17.50 | 44.00 |
| 100 miles | 20.80 | 20.00 | 48.00 |
| **Computed on Carload of 85,000 Pounds** | | | |
| 25 miles | 14.54 | 12.00 | 29.75 |
| 50 miles | 17.85 | 15.00 | 38.35 |
| 75 miles | 19.55 | 17.50 | 46.75 |
| 100 miles | 22.10 | 20.00 | 51.00 |
| **Computed on Carload of 90,000 Pounds** | | | |
| 25 miles | 15.40 | 12.00 | 31.50 |
| 50 miles | 18.90 | 15.00 | 40.50 |
| 75 miles | 20.70 | 17.50 | 49.50 |
| 100 miles | 23.40 | 20.00 | 54.00 |
| **Computed on Carload of 95,000 Pounds** | | | |
| 25 miles | 16.26 | 12.00 | 33.25 |
| 50 miles | 19.95 | 15.00 | 42.75 |
| 75 miles | 21.85 | 17.50 | 52.25 |
| 100 miles | 24.70 | 20.00 | 57.00 |
| **Computed on Carload of 100,000 Pounds** | | | |
| 25 miles | 17.12 | 12.00 | 35.00 |
| 50 miles | 21.00 | 15.00 | 45.00 |
| 75 miles | 23.00 | 17.50 | 55.00 |
| 100 miles | 26.00 | 20.00 | 60.00 |

[fol. 409] (e) That said second report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, finds that said Newly Reduced Rates are "on substantially the same level as the Cummer Scale", and your orators aver that in practical operation and effect each and every of said Newly Reduced Rates hereinabove referred to are on substantially the same level as the Cummer Scale, or are on a lower level than the Cummer Scale.

(f) That said Newly Reduced Rates, published in thirty-four tariffs as aforesaid, are published in some of said tariffs as transit rates, but in more than twenty other of said tariffs are published as local rates, that is, the application of the rate is not dependent upon the posting of any bond or the payment of any additional sum or the execution of any commitment of any sort to assure any outbound movement over the lines of the railroad carrier which moves the logs to the mills. That the Cummer Scale of rates, while in terms a local scale, is in practical operation and effect tantamount to a transit scale, in that all or substantially all of the outbound products manufactured by the several shippers receiving logs under the Cummer Scale move over the lines of the Atlantic Coast Line Railroad Company, under and by virtue of the terms of service contracts exacted from such shippers in the case of trainload shipments and by virtue of the location of the mills of many if not most of such other shippers as receive logs under the Cummer Scale. That in said proceeding before said Interstate Commerce Commission your orators offered [fol. 410] and attempted to prove that said Cummer Scale in practical operation and effect is tantamount to a transit scale as aforesaid and, upon objection of said Atlantic Coast Line Railroad, said offer and the evidence supporting it was refused and rejected by said Interstate Commerce Commission. That in practical operation and effect said newly reduced rates are substantially similar to the Cummer Scale, and in many instances substantially lower than said Cummer Scale.

(g) That to-wit, in June, 1931, the carriers by rail and water throughout the United States subject to the jurisdiction of the Interstate Commerce Commission did institute proceedings before said Commission wherein and whereby the authority of said Commission was sought to increase all interstate freight rates to the extent of 15 per

cent to remove revenue burdens from said carriers; that the defendant Atlantic Coast Line Railroad Company and the several rail carriers by which the Newly Reduced Rates have been published were parties to or represented in said last described proceedings before said Interstate Commerce Commission; that in and by and on behalf of the said carriers all and singular it was urged in said proceedings that such increase was required to provide additional revenue for the operation of said carriers; that said Interstate Commerce Commission in and by its report and order (178 I. C. C. 539) authorized certain increases upon a large number of classes and commodities of freight but refused to [fol. 411] permit any increase in the rates on certain other commodities, including logs; that afterwards, to-wit, in the month of September, 1932, the said Interstate Commerce Commission in and by its said report (186 I. C. C. 615) authorized the said carriers by rail and by water to continue the said increase in rates and in and by its further orders in said proceeding did attempt to authorize such carriers each and every to increase the intrastate rates on certain commodities and classes of freight to the extent that the interstate rates were increased as aforesaid; that all or substantially all of the newly reduced rates were established after the institution of the said 15 per cent proceeding and while the increase in freights therein and thereby authorized were in force and effect.

(h) That after the last hearing herein the defendant, Atlantic Coast Line Railroad Company, by its tariff G. F. O. No. 256, issued December 5, 1932, effective December 9, 1932, published rates on logs in minimum carloads of 50,000 pounds from all stations on its lines within thirty miles of West Marion, South Carolina, to said West Marion, which are as follows:

| | |
|---|---|
| 20 miles and under | 1½ cents per hundred pounds. |
| 30 miles and over 20 miles | 2 cents per hundred pounds. |

That said rates so published are not transit rates and have no connection with the movement of the outbound manufactured product, and said rates are substantially the same as the Cummer scale and for certain distances less than the Cummer scale. And your orators alleged that said Atlantic Coast Line Railroad now has in force and effect other rates

for the transportation of logs which are as low or lower than said Cummer scale.

(i) That in seeking to justify its invasion of the domain of the State of Florida, the Interstate Commerce Commission relied upon and gave consideration to comparisons of the said Cummer Scale with divers scales of transit and other rates on logs then effective upon divers other rail- [fol. 412] roads in said Southeastern territory, and in many instances the very rates so compared with said Cummer Scale have been superseded in whole or in part by the Newly Reduced Rates which said Interstate Commerce Commission has suffered and permitted lately to become effective as aforesaid.

(j) That the circumstances and conditions surrounding the transportation of logs in intrastate commerce in Florida over the lines of the defendant Atlantic Coast Line Railroad are similar to, and as favorable or more favorable than, the circumstances and conditions surrounding the transportation of logs over the railroads, and under the tariffs, publishing said Newly Reduced Rates. And your orators aver that there is now a substantial movement of logs by truck in Florida.

(k) That the action of said Interstate Commerce Commission in permitting said newly reduced rates to become effective and to supersede the substantially higher interstate rates theretofore existing for the transportation of logs, is substantially concurrent with the attempt on the part of said Commission to supersede said Cummer Scale of rates in intrastate commerce in Florida with the substantially higher scale of rates prescribed by said Commission as aforesaid. That said Interstate Commerce Commission at no time has attempted to fix intrastate rates for the transportation of logs in any state in the Southern territorial rate group other than in Florida, or on any railroad other than the Atlantic Coast Line Railroad.

12. That your orators by the exercise of no reasonable amount of diligence could have discovered the filing, publication or establishment of said Newly Reduced Rates so permitted as aforesaid by said Interstate Commerce Commission to become effective, and since such discovery have [fol. 413] acted diligently in the preparation and filing of

said motions for further hearing in said proceeding before said Interstate Commerce Commission and in the preparation and filing of this supplemental bill of complaint herein.

13. And your orators aver (as at all times in these proceedings they have averred) that said Interstate Commerce Commission is without the power, authority or jurisdiction to prescribe intrastate rates for the transportation of logs in intrastate commerce in Florida in said proceeding, and that said Interstate Commerce Commission has not made and cannot upon the record in said proceeding make the findings which would justify the invasion of the domain of the State of Florida, and that said Interstate Commerce Commission has not justified and could not upon said record justify the invasion of the domain of the State of Florida to fix intrastate rates, and that the action of said Interstate Commerce Commission in attempting so to do was and is arbitrary and unlawful; that the matters and things hereinabove set forth constitute additional evidence further demonstrating that the said order of the said Interstate Commerce Commission in invading the domain of the State of Florida as aforesaid was not and is not justified and was and is arbitrary, unreasonable, beyond the power of said Interstate Commerce Commission, and wholly invalid and unlawful.

[fol. 414] 14. And your petitioners allege that the authority of the State of Florida acting in its sovereign capacity over its own intrastate rates was at all times and is paramount and superior to Federal authority with respect to said rates until and unless said State authority actually conflicts with the Federal authority to regulate interstate commerce, and that the Interstate Commerce Commission is without the statutory power to invade the domain of the State of Florida in derogation of said State authority until and unless it shall be made to clearly appear from lawful evidence that the jurisdictional facts exist which warrant the Interstate Commerce Commission in invading said domain of the State of Florida; that whether or not such jurisdictional facts exist and have been made to clearly appear from lawful evidence is a judicial question which this Court under the Constitution of the United States (and in particular under Section 1 of Article III thereof, and the Tenth Amendment thereof,

of which your petitioners claim the benefit and protection), is bound to determine for itself in this cause according to the established forms of law, anything in the Interstate Commerce Act as amended to the contrary notwithstanding. That your petitioners are entitled to a trial de novo upon such jurisdictional facts by this Court and hereby make demand for such trial.

Forasmuch, therefore, as your orators are without remedy save in a Court of Equity, your orators pray as follows:

[fol. 415] A. That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, and Atlantic Coast Line Railroad Company with service thereof and of this supplemental bill of complaint in the manner prescribed by statute in such cases made and provided.

B. That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and are null and void and that said report and order, as amended, be set aside and annulled.

C. That this Court will allow a temporary stay or suspension of the operation of the said order of the Interstate Commerce Commission pending the application for the injunctions herein sought.

D. That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

E. That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission, and permanently enjoining the enforcement thereof.

[fol. 416] F. That your petitioners may have such other and further relief in the premises as to this Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

The State of Florida, by D. M. Sholtz, Governor. Eugene S. Matthews, Mamie Eaton-Greene, W. B. Douglass, as and constituting the Railroad Commissioners of the State of Florida. Cary D. Landis, Attorney General of the State of Florida; Theo. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Petitioners.

[fol. 417] *Duly sworn to by Eugene S. Matthews. Jurat omitted in printing.*

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[fol. 418] EXHIBIT "A" TO SUPPLEMENTAL BILL

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted November 22, 1932. Decided January 9, 1933

FINDINGS IN PRIOR REPORT ON FURTHER HEARING, 186 I. C. C. 157, THAT THE RATES ON LOGS OVER SIX FEET IN LENGTH, EXCEPT WALNUT, CHERRY, AND CEDAR, IN CARLOADS, APPLYING ON SHIPMENTS BETWEEN POINTS ON THE ATLANTIC COAST LINE RAILROAD IN FLORIDA FOR DISTANCES OF 170 MILES AND LESS WERE UNJUSTLY DISCRIMINATORY AGAINST INTERSTATE COMMERCE, AFFIRMED.

R. C. Alston and F. W. Gwathmey for defendant.

T. T. Turnbull for Florida Railroad Commission.

H. P. Adair, C. T. Ashby, J. V. Norman, A. G. Gutheim, F. S. Hillyer and E. C. Green for interveners.

Second Report of the Commission on Further Hearing

MEYER, Commissioner:

Our report on further hearing of July 5, 1932, 186 I. C. C. 157, contains a full and complete history of this proceeding

up to that time. To briefly summarize what is there shown: In the original report, 146 I. C. C. 717, defendant's interstate rates on logs over six feet in length, except walnut, cherry, and cedar, for distance of 170 miles and less, from northern Florida to Georgia were found unreasonable, and its Florida intrastate rates on similar logs for similar hauls, known as the Cummer scale, found to result in undue preference to shippers of intrastate traffic within Florida and undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia and in unjust discrimination against interstate commerce. Suits were brought by the State of Florida, the Florida Railroad Commission, and certain manufacturers of lumber in Florida, [fol. 419] interveners herein, to enjoin that part of the order entered that dealt with the Florida intrastate rates, and in Florida v. United States, 282 U. S. 194, the Supreme Court held that such part of the order was not supported by appropriate findings. Thereafter, upon petitions of complainant and defendant, we reopened the proceeding for further hearing, which was held. In our report on such further hearing, referred to above, we affirmed the previous findings, except that as to the alleged undue prejudice against persons and localities in interstate commerce we made no finding. We again, by order of July 5, 1932, as amended by order of July 28, 1932, *as amended by order of July 28, 1932*, required that the unjust discrimination against interstate commerce be removed by establishing intrastate in Florida the same scale which we found reasonable for interstate application from Florida to Georgia. Bills to enjoin this order were filed in the United States District Court by the same parties who had succeeded in enjoining the previous order. Argument was had before the Court September 14, 1932, the day before the effective date of our order. The Court took the case under advisement and, in order to allow time for it to consider the case, issued a temporary suspension order for not to exceed 60 days. In early October the same parties filed with us petitions for further hearing, setting forth therein that since our report on further hearing other southern rail carriers had reduced their log rates to substantially the same basis as the Cummer scale. On or about the same time they filed supplemental bills in the United States District Court in which they set up the filing of these petitions and prayed

that our order be further stayed. Upon consideration of the petitions referred to, we suspended the operation of our order of July 5, 1932, as amended, until our further order and reopened the proceeding for further hearing for the [fol. 420] sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant. The bills and supplemental bills filed in the United States District Court are still pending. The further hearing has been held; also oral argument before the presiding examiner, as provided by our order of reopening.

The evidence introduced at the further hearing shows that certain carriers that operate in southwestern and southern territories have in recent months established rates on logs, bolts, billets, rough staves, and heading in amounts per car regardless of weight, which rates are on substantially the same level as the Cummer scale referred to. These rates were first established by certain railroads operating west of the Mississippi River, following a meeting held March 29, 1932, between their representatives and certain shippers, at which meeting it was agreed that rates of $12.50 for distances of 25 miles or less, $15 for distances of 25 but not over 50 miles, $17.50 for distances of 50 but not over 75 miles, and $22.50 for distances of 75 but not over 100 miles should be established in Arkansas, Louisiana, and Missouri experimentally in an effort to meet truck competition, and that they should expire by limitation December 31, 1932.

On or about the same time the Illinois Central System, and later the Gulf, Mobile & Northern Railroad, Mobile & Ohio Railroad, St. Louis-San Francisco Railway, Central of Georgia Railway, Southern System, Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway, Western Railway of Alabama, and Columbus & Greenville [fol. 421] Railway established similar rates. Those of the Illinois Central System became effective April 1, 1932, intrastate in Mississippi, and April 12, 1932, interstate; those of the Gulf, Mobile & Northern, May 9, 1932; and those of the other lines at subsequent dates, generally in July and August, 1932. Generally these rates are published to ex-

pire in one year unless sooner canceled, changed, or extended.

The rates of these southern lines are not uniform and also vary somewhat from those referred to above as agreed upon by the southwestern carriers. Like those of the southwestern carriers, all are in amounts per car regardless of weight. Generally they are either $12 or $12.50 for distances to 25 miles and either $20 or $22.50 for distances over 75 but not over 100 miles, with rates for the intermediate mileage blocks the same as those of the southwestern carriers. However, the rates of the Seaboard Air Line and Central of Georgia to Montgomery, Ala., and those of the Western of Alabama to Montgomery and Selma, Ala., which are the only per car rates published by those lines, as well as those of the Southern to Selma, Mobile, and York, Ala., are $14.50, $17.50, $20.00 and $22.50 for the respective mileage blocks mentioned above. The Columbus & Greenville has also established rates of $22.50 for distances over 100 but not over 125 miles; $25. for distances over 125 but not over 150 miles; and $27.50 for distances over 150 but not over 170 miles.

The per car rates of the Illinois Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in Southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, [fol. 422] and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss., those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products, as will be later explained. It will be noted that all of these rates apply in the western portion of southern territory and none in the eastern portion.

Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All, except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also [fol. 423] to points to which they are applicable if the tariff provisions referred to above are not complied with. The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York and Chattanooga are local rates and their application is not dependent upon the outbound movement of the manufactured products over their lines.

The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. While the extent of this truck competition is not shown, it apparently was sufficiently compelling, in the judgment of the managers of these railroads, to warrant the establishment of these rates as an experiment. With some of these southern carriers, particularly the Mobile & Ohio and the St. Louis-San Francisco, carrier competition also had a considerable influence in the establishment of these rates. For example, a representative of the St. Louis-San Francisco testified that that road had decided not to establish these rates east of the Mississippi River, but was later forced to do so to meet the competition of other carriers, it having found that logs were being trucked from its rails to competing railroads which had previously established the

per car rates. In this connection it should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement on the manufactured products, except in the case of the Nashville, Chattanooga & St. Louis and, in some instances, the Southern.

It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound move-
[fol. 424] ment of the manufactured product; and that while these rates, standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the eastbound movement of the manufactured product. A representative of the Southern testified that in those instances in which its per car rates were not made dependent on the outbound movement of the manufactured product it was willing to depend upon what it termed the moral obligation of the shipper to give it the outbound movement. With respect to its per car rates to Memphis, Laurel and Corinth the Southern provides by its tariffs that such rates shall apply only if it transports the outbound manufactured product. No representative of the Nashville, Chattanooga & St. Louis appeared at the further hearing.

Representatives of the Illinois Central, Gulf, Mobile & Northern, Mobile & Ohio, St. Louis-San Francisco, Central of Georgia, and Southern testified that they hoped that the experiment of publishing these rates would prove successful after sufficient time had elapsed to fully test it, but that so far the experiment had not proved successful, as they had regained relatively little of the log traffic from the trucks; that what traffic they had regained from the trucks had been for the most part traffic moving from about 25 to 60 miles, although some had been recovered that moved as much as 98 miles and some that moved as little as 11 miles; and that there is little, if any, hope of securing much of the traffic that now moves by truck for distances under 25 miles, a considerable portion of which never has moved by rail.

A witness for the Florida interveners testified that two mills, which he had visited and whose records he had inspected, had materially increased their shipments by rail since the establishment of these per car rates; that one,

[fol. 425] at Montgomery, previously received about 10 per cent of its logs, amounting to about 10 or 12 carloads a month, by rail, whereas since the establishment of these rates it had received over the Central of Georgia from 60 to 90 carloads a month, which constituted about 50 per cent of the logs received; and that the other, at Chattanooga, with a capacity of 25,000 feet a day and operating from 2 to 3 days a week for the past year, previously received about 20 per cent of its logs by rail and 80 per cent by truck, whereas since the establishment of these rates it has received about 80 per cent by rail and 20 per cent by truck. His testimony with respect to the receipts of the mill at Montgomery is not borne out by the testimony of the representative of the Central of Georgia, which shows that that carrier's per car rates to Montgomery became effective August 15, 1932, intrastate, and September 13, 1932, interstate, and that thereafter to November 11, 1932, which was 10 days prior to the further hearing, it had transported but 53 carloads of logs to Montgomery. On the basis of 2 days' operation per week, the total log requirements of the Chattanooga mill would be about 5 carloads of 100,000 pounds each per week. Accordingly, the increase in the rail movement of logs to that mill from approximately 20 to 80 per cent of the total represents an increase of but 3 carloads a week. On the basis of 3 days' operation, the increase would be about 4 or 5 carloads a week.

The parties are in agreement that the tendency of rates per car regardless of weight is to increase the loading of the cars. The Florida interveners show that since the establishment of these per car rates the mill at Chattanooga, referred to above, will accept only cars that have a loading capacity of about 125,000 pounds and that its average loading ranges from 105,000 to 110,000 pounds; and that mills at Montgomery and Memphis have received cars loading over 90,000 pounds and a mill at Laurel has received cars loading as high as 122,000 pounds.

[fol. 426] Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less. A witness employed by the Florida intervener to make an investigation of the extent of the movement of logs by truck in Florida specified 23 mills located

at 19 different points in Florida to which all or substantially all of the logs cut were transported by truck. Most of these mills were cutting less than 10,000 feet of lumber a day; only 4 were cutting more. The 23 mills were cutting a total of less than 200,000 feet a day, which is less than the capacity of a single large Florida mill such as that of intervener Brooks-Scanlon Corporation at Foley, and is a very small percentage of the total lumber cut in Florida. This witness testified as to the range of the hauls by truck to nearly all of these mills, but did not know what the average hauls were, the location of the logs, or how far they were from a railroad. The maximum hauls were 10 miles or less to 3 of the mills; between 10 and 15 miles to 2; between 15 and 20 to 5; between 20 and 25 miles to 4; between 25 and 30 miles to 2; and between 30 and 45 miles to 5. The length of the hauls to 2 of the mills were not known. Of the 23 mills, 7 were located on defendant's lines exclusively; 3 on the lines of defendant and the Seaboard Air Line; one on the lines of defendant and the Southern; 9 on the Seaboard Air Line exclusively; one on the Florida East Coast; one on the Georgia, Southern & Florida; and one on the Live Oak, Perry & Gulf. The 11 mills located on defendant's lines were cutting a total of approximately 87,500 feet a day, and the maximum haul by truck was 10 miles to 2 of the mills; between 10 and 15 miles to 2; between 15 and 20 miles to 2; between 20 and 25 miles to 3; and between 25 and 30 miles to one. The length of the hauls to 2 were not known. The record does not show whether any of the logs moved by truck to these 11 mills could have moved over defendant's lines. A cut of 87,500 feet a day represents approximately [fol. 427] 20 carlods of logs, based on 4,231 board feet to the carload, the average of one intervener as will hereinafter appear.

In addition to the above, representatives of two other mills located at Jacksonville testified as to the movement of logs to their mills by truck. One is located on defendant's lines exclusively and the other on the Seaboard Air Line exclusively. The former started operations in June, 1930, and cuts approximately 700,000 feet a month; the latter started operations in March, 1931, and has cut from 75,000 to 100,000 feet a week from that time to early in November last, when it ceased operations until the first of the year, when it expected to resume.

The first of these mills is that of F. S. Buffum Company, which company was permitted to intervene herein at the time the case was reopened for further hearing. From June, 1930, to October, 1932, both months inclusive, it received 1,092 carloads of logs by rail, 931 of which were transported to Jacksonville by defendant, 135 by the Seaboard Air Line, 2 by the Southern, and 24 by the Florida East Coast. During the same period this intervener received the equivalent of 1,935.3 carloads by truck and 151.3 carloads by water, using 4,231 board feet of logs as a carload, that being the average board measure per carload received by rail at this mill. The movement during the period when the interstate rates prescribed in the original report of division 4 were in effect is compared with the movement during the subsequent period when the Cummer scale was charged. While the Cummer scale was reestablished April 10, 1931, shipments received during April and May, 1931, were included in the period during which the interstate scale was in effect, the witness for intervener stating that it had taken some time to rearrange the mill's contracts for logs. During the 12 months from June, 1930, to May, 1931, this intervener received 275 carloads by rail and the equivalent of 703.8 carloads by truck and 85 by water, a total of 1,063.8 carloads. Approximately 26 per cent of the carloads were received by rail during this period. During the subsequent [fol. 428] 7 months, June to December, 1931, during which the Cummer scale was in effect, a total of 529 carloads were received, of which approximately 26 per cent were by rail. During the latter period the mill was not operating for two and a half months. During the first 10 months of 1932, when the Cummer scale was also in effect, 683 carloads were received by rail and the equivalent of 848.5 by truck and 64.2 by water, a total of 1,595.7 carloads. During this period approximately 43 per cent of the carloads moved by rail. The hauls of the shipments received by truck during these 10 months of 1932 ranged from 16 to 55 miles and the weighted average haul was 30.6 miles. If these logs had moved by rail, the rail hauls would have ranged from 12 to about 40 miles. The difference between the rail and the truck distances range from 2 to 20 miles and apparently the greater part of these differences represent the hauls necessary to get the logs to the railroad. For example, the truck hauls from Maxville and Doctor's Inlet are given as 30 and 38 miles, respectively, and the rail hauls from the same points

at 28 and 18 miles, respectively. Of the shipments by truck during these 10 months only the equivalent of 254 carloads, or approximately 30 per cent of the total received by truck, were from points from which they could have moved over defendant's lines if moved by rail; over 50 per cent were from points adjacent to the Florida East Coast. These 254 carloads moved by truck notwithstanding the fact that the Cummer scale was in effect over defendant's lines. All but 3 of these 254 carloads moved from points from which the rail distances to Jacksonville range from 11 to 26 miles.

The other Jacksonville mill referred to is that of the W. J. Bryson Lumber Company. Its representative testified that since it started operations in March, 1931, it has received all of its logs by truck, except that 27 or 28 carloads were received by rail from Dukes and Cross City on defendant's lines. The rail hauls to Jacksonville from those points are [fol. 429] 58 and 118 miles, respectively. While the witness further testified that the truck hauls ranged from 10 to 68 miles and that a substantial portion of the logs were hauled over 50 miles, instancing the haul from Green Cove Springs as between 60 and 70 miles, the evidence introduced by the Jacksonville intervener, referred to above, shows that its truck hauls from that point were but 40 miles and the rail distance 26 miles. This witness also testified that the average haul by truck to his mill was about 50 miles, but the evidence of record as a whole indicates that none of the specific movements referred to by him was ever about 40 miles.

The total cut of all the mills to which the Florida interveners show a movement of logs by truck is less than 250,000 feet a day, which is equivalent to a daily movement of about 57 carloads of logs. However, many of these mills are not on the rails of defendant and much of the movement by truck to these mills is from territory not served by defendant. As stated, approximately 254 carloads moved to the Buffum Company by truck during the first 10 months of 1932 that could have moved over defendant's lines, and the record also indicates that approximately 200 carloads received by the Bryson Company since March, 1931, could have moved over defendant's lines, but the record does not show that any of the other logs shown to have moved by truck in Florida could have moved over defendant's lines. The logs that moved by truck to these two companies which the record shows could have moved over defendant's lines

represents an average of approximately 35 carloads a month and, as indicated above, they moved for relatively short distances. During the first 8 months of 1932, defendant transported 773 carloads of logs to Jacksonville, an average of 96.5 carloads per month. The rail hauls on these logs ranged from 32 to 185 miles; the hauls on all except 8 carloads were 53 miles or more.

A witness for intervener Wilson Lumber Company of Florida which operates at Perry one of the larger hard- [fol. 430] wood mills in Florida, testified that that company has received very few logs by truck but that the road conditions in the vicinity of the mill are favorable for movement by truck; that his company owns or has under option about 14,000,000 feet of timber located from about one-fourth to 15 miles from defendant's line at Carbur, which is 17 miles from Perry over defendant's lines, and about 1,000,000 feet at other points within about 30 miles of its mill; that it also buys hardwood logs from other companies which cut pine and cypress, which logs have moved by rail for distances up to about 170 miles; that it has received an offer from a responsible party to transport these logs from Carbur to Perry for $2 per thousand feet, minimum 25,000 feet a day; that the Cummer scale rate of 171 cents per 100 pounds for the distance from Carbur to Perry is equivalent to $2.05 per thousand feet, and the interstate scale of 3 cents for that distance equivalent to $3.60 per thousand feet, which latter rate it would be out of the question for his company to pay as against the truck rate of $2 per thousand feet.

The freight traffic manager of defendant testified that one of his important duties is to keep informed as to the extent to which trucks are taking business from defendant and as to the advisability and practicability of defendant reducing its rates because of truck competition, and that from 75 to 80 per cent of his time is given to a study of truck competition; that there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks; and that the log traffic which moves by

truck for distances under 25 miles could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad sta- [fol. 431] tions represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars. This witness also showed that defendant's total log traffic in Florida, exclusive of that moving in train-loads, for the 13 months following the last hearing, that is from August 1, 1931, to August 31, 1932, was 2,453 carloads as compared with 3,245 carloads during the previous 13 months from July 1, 1930 to July 31, 1931. The decrease was 792 carloads, or 24.4 per cent, but the decrease in defendant's Florida lumber traffic during the same period was even greater. From July 1, 1930, to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles and lath originating in Florida, whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all class I carriers in the southern region, and over all class I carriers in the United States. For example, from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following 9 months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all class I carriers in the southern region and by all class I carriers in the United States were 27, 28 and 30, respectively.

Exclusive of the movement in train-loads, defendant handled a monthly average of 282 carloads of logs over six feet in length between points in Florida during the year 1930, an average of 198 carloads a month during 1931, and an average of 188 carloads a month during the first 8 months of 1932. In this connection it should be remembered that in 1930, when the movement was heaviest, [fol. 432] and to April 10, 1931, the interstate scale of rates prescribed in the original report was in effect, and that during the remainder of 1931 and 1932 the much lower Cummer scale was charged. The monthly movement, ex-

clusive of that in train-loads, since the former hearing, July 21, 1931, has averaged substantially the same as from December 1, 1930 to August 1, 1931. As stated in our prior report on further hearing the main depression in the lumber industry in Florida began about the latter part of 1930. At the time of the last previous hearing, the only remaining train-load movement was from Hines to Palatka. The extent of that movement and the extent to which the mill at Palatka has been operating since that time has not been shown, nor has it been shown that the mill at Palatka has received any logs by truck. As stated in our prior report on further hearing, the movement from February 1 to June 30, 1931, was from 52 different stations to 17 different destinations. The movement from February 1, 1931, to August 31, 1932, exclusive of the train-load movement from Hines to Palatka, was 4,079 carloads, which shipments were from 125 different stations to 28 destinations for hauls ranging from 5 to 235 miles. Of these shipments, 79 moved for distances over 170 miles, beyond which distance the Cummer scale does not extend, and, as indicated by Appendix B to our prior report on further hearing, the Florida intrastate rates applicable over defendant's lines for distances over 170 miles are on substantially the same level as the interstate rates generally applicable in southern territory and as the rates prescribed for intrastate application in Florida for distances of 170 miles and less in the original report in this proceeding.

The record warrants the conclusion that truck competition and, to a lesser degree carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the [fol. 433] western portion of southern territory, to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particular- 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient

importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

The Florida interveners contend that as transportation conditions are substantially similar throughout southern territory and as the Cummer scale is substantially the same as or slightly higher than the per car rates of these other southern lines, the Cummer scale cannot cast an undue revenue burden on interstate commerce, as found in our prior report on further hearing, unless the per car rates referred to also cast a similar revenue burden on interstate commerce.

Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. [fol. 434] Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. We referred to Southern Class Rate case in which we prescribed class rates for that port of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida than were prescribed in the Class Rate case. In Rates on Chart, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286, the rates prescribed for

the hauls in Florida were approximately 40 per cent higher than for the reminder of southern territory.

Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances.

In Florida, on the other hand, the movement of logs has not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles and this record warrants the conclusion that truck competitive rates for distances under 25 miles would regain little, if any, traffic, [fol. 435] and that to require defendant to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted. Logs in single carloads are now moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida. The monthly movement since February 10, 1931, when the Cummer scale was reestablished, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the reestablished substantially lower Cummer scale has had no effect on the volume of rail movement.

Generally we do not approve of rates published in amounts per car regardless of weight and nothing contained herein should be considered as an approval of rates so published on logs. These per car rates on logs are not here in issue and no one has complained to us in any other proceeding that they are unreasonable, unduly preferential, or otherwise unlawful.

We affirm all of the findings in our prior report on further hearing and will vacate our order suspending the op-

eration of our order of July 5, 1932, as amended.

Our findings herein and in our prior report on further hearing are without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

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[fol. 436] At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 9th Day of January, A. D. 1933

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

It appearing, That on July 5, 1932, the commission made and filed its report on further hearing and entered its order in the above-entitled proceeding; that on July 28, 1932, it entered its order amending said order of July 5, 1932; and that on October 21, 1932, it entered its order reopening said proceeding for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant, and also suspending the operation of said order of July 5, 1932, as amended by order of July 28, 1932, until the further order of the commission:

It is further appearing, That such further hearing has been had, and that the commission, on the date hereof, has made and filed a second report on further hearing containing its findings of fact and conclusions thereon, which said report and also the report on further hearing and the order of July 5, 1932, as amended by order of July 28, 1932, are hereby referred to and made a part hereof:

It is ordered, That the order heretofore entered in this proceeding on October 21, 1932, suspending the operation of the order of July 5, 1932, as amended by order of July 28, 1932, until the further order of the commission be, and it is hereby, vacated and set aside as of February 11, 1933, and that thereafter the aforesaid order of July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the commission.

By the commission.

George B. McGinty, Secretary. (Seal.)

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[fol. 437] EXHIBIT "B" TO SUPPLEMENTAL BILL

Order

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 19th Day of January, A. D. 1933

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of the record in the above-entitled proceedings, and for good cause shown:

It is ordered, That the order heretofore entered in said proceeding on January 9, 1933, vacating and setting aside as of February 11, 1933, the order previously entered therein on October 21st, 1932, be, and it is hereby, amended so as to vacate and set aside said order of October 21st, 1932, as of February 25, 1933, and to provide that thereafter the order previously entered in this proceeding on July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 438] EXHIBIT "C" TO SUPPLEMENTAL BILL

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

MOTION TO SET ASIDE THE FINAL ORDER OF THE INTERSTATE COMMERCE COMMISSION AND FOR FURTHER HEARING IN AND RECONSIDERATION OF THE ABOVE ENTITLED PROCEEDING

Come now the State of Florida and the Florida Railroad Commission, and not admitting the jurisdiction or power of the Interstate Commerce Commission to enter the final order which was entered in the above entitled cause, but expressly denying the existence of such jurisdiction and power, and move the said Interstate Commerce Commission to set aside such final order and for a further hearing in [fol. 439] and reconsideration of the above entitled cause, and in support of such motion, respectfully show:

1. That by its report and order dated July 5, 1932, as amended July 28, 1932, and by its second report on further hearing and order dated January 9, 1933, as amended January 19th, 1933, to become effective February 25, 1933, this Interstate Commerce Commission purported to fix intrastate rates thereafter to be charged in Florida for the transportation of logs on the lines of the Atlantic Coast Line Railroad (said rates being expressed in cents per hundred pounds) as follows:

| Distances | Rates cents |
|---|---|
| 10 miles and under | 2.5 |
| 20 miles and over 10 | 3.0 |
| 30 miles and over 20 | 3.5 |
| 40 miles and over 30 | 4.0 |
| 55 miles and over 40 | 4.5 |
| 70 miles and over 55 | 5.0 |
| 85 miles and over 70 | 5.5 |
| 100 miles and over 85 | 6.0 |
| 120 miles and over 100 | 6.5 |
| 140 miles and over 120 | 7.0 |
| 160 miles and over 140 | 7.5 |
| 170 miles and over 160 | 8.0 |

2. That this Interstate Commerce Commission sought to justify its invasion of the domain of the State of Florida, and to prescribe intrastate log rates upon no ground save [fol. 440] upon the asserted ground that the lawful state rates of the State of Florida (the Cummer scale of rates) constituted an unjust discrimination against Interstate Commerce from a revenue standpoint; and that in reaching its conclusions and prescribing said rates in its said report and order of July 5, 1932, said Interstate Commerce Commission relied upon and gave consideration to certain comparisons of said Cummer scale of rates with other scales of rates for the transportation of logs effective in Southern territory.

3. That said second report on further hearing of this Interstate Commerce Commission refers to certain newly reduced rates established by certain carriers in Southern and Southwestern territories for the transportation of logs, the tariffs setting forth which said rates having been filed in evidence in this proceeding. That said newly reduced rates were found by said second report to be "on substantially the same level as the Cummer scale". That in addition to said rates set forth in said tariffs already in evidence herein, certain other tariffs have been filed with said Interstate Commerce Commission and said Commission has permitted to become effective the scales of rates for the transportation of logs set forth in such tariffs.

4. That the Louisville & Nashville Railroad Company, after the last hearing herein, by its tariff, I. C. C. No. 16022, Supplement 19, effective January 27, 1933, published a scale of rates for the transportation of logs over its entire system except on Alabama intrastate traffic, and except on traffic from, to, or between points in Illinois, Indiana, Missouri and/or Ohio, which is as follows:

| | |
|---|---|
| [fol. 441] 25 miles and less | $12.00 |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 20.00 |

That said tariff likewise published a rate for the transportation of logs of $29.50 per car, from Louisville, Kentucky, to Knoxville, Tennessee, a distance of 277 miles. That said rates so established by said Louisville and Nash-

ville Railroad Company are per carload rates expressed in lump sum terms per carload, regardless of weight, and said scale of rates is now in effect and applicable on and over more than 225 miles of the lines of said Louisville & Nashville Railroad Company in the State of Florida.

5. That the defendant, Atlantic Coast Line Railroad Company, by its tariff I. C. C. No. 2745, filed to become effective December 10, 1932, and in Rule 127 of said tariff, has published for the transportation of logs over its lines to Montgomery, Alabama, net transit rates which are as follows:

100 miles and under ..... 2½ cents per hundred pounds
125 miles and over 100 miles ..... 3½ cents per hundred pounds
175 miles and over 125 miles ..... 4½ cents per hundred pounds

[fol. 442] And said Atlantic Coast Line Railroad Company, after the last hearing herein by Supplement Number 1 to said tariff, effective December 10, 1932, did publish rates on lumber, poles, piling and forest products not otherwise specified to Charleston, South Carolina, from the following points of origin as follows:

| From | To | Distance miles | Rate (in cents per hundred pounds) |
|---|---|---|---|
| Gourdin, S. C. | Charleston, S. C. | 51 | 1 |
| Florence to Lanes, S. C. | Charleston, S. C. | 102 | 1½ |
| Sumter, S. C. | Charleston, S. C. | 94 | 1½ |
| Gamble to Carpon, S. C. | Charleston, S. C. | 56 | 1½ |
| Dillon to Florence Transfer, S. C. | Charleston, S. C. | 132 | 2½ |
| Mullins to Evansdale, S. C. | Charleston, S. C. | 130 | 2½ |
| Darlington to Haynesworth, S. C. | Charleston, S. C. | 110 | 2½ |
| Berry to Clio, S. C. | Charleston, S. C. | 128 | 2½ |
| Currans to Nix | Charleston, S. C. | 104 | 2½ |
| Ebenezer to Ryttenburg | Charleston, S. C. | 95 | 2½ |
| Bennettsville to Lides | Charleston, S. C. | 134 | 3 |
| Maxie to Noah | Charleston, S. C. | 138 | 3 |
| Wisacky to Lucknow | Charleston, S. C. | 115 | 3 |
| Floyd to Perkins | Charleston, S. C. | 116 | 3 |
| Auburn and Hartsville | Charleston, S. C. | 122 | 3 |

[fol. 443] That the distance from the points of origin to Charleston, South Carolina, are likewise shown in the above tabulation. That said rates to Charleston, South Carolina, published by said tariff, are applicable for re-ship-

ment to Richmond, South Richmond, Petersburg, Jarratt, Norfolk, Pinnacle's Point, Portsmouth, Suffolk, Lynchburg, Roanoke, Virginia, or points beyond.

6. That the Central of Georgia Railway Company by its tariff I. C. C. No. 2851, effective interstate September 27, 1932, and intrastate August 26, 1932 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of logs from stations on its lines to Augusta and Waynesboro, Georgia, which is as follows:

| | Cents per 100 lbs. |
|---|---|
| 50 miles and under | 2½ |
| 75 miles and over 50 miles | 3 |
| 100 miles and over 75 miles | 3½ |

7. That the Atlanta, Birmingham and Coast Railroad Company by its tariff No. 18, effective October 10, 1927 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of logs, applicable at Thomas-[fol. 444] ville and Tifton, Georgia, which is as follows:

| | Cents per 100 lbs. |
|---|---|
| 25 miles and under | ½ |
| 50 miles and over 25 miles | 1½ |

8. That the Norfolk and Southern Railroad Company, by its tariff I. C. C. No. A-760, effective May 15, 1931 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of lumber, piles and other forest products to Norfolk, Virginia, which is as follows:

| | Cents per 100 lbs. |
|---|---|
| 50 miles and under | 3 |
| 100 miles and over 50 miles | 4 |
| 150 miles and over 100 miles | 5 |
| 200 miles and over 150 miles | 6 |

9. That the Georgia & Florida Railroad Company, by its tariff I. C. C. No. 558, effective May 6, 1931 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of logs, applicable over its entire line, [fol. 445] which is as follows:

| | Cents per 100 lbs. |
|---|---|
| 50 miles and under | 2½ |
| 75 miles and over 50 miles | 3 |
| 100 miles and over 75 miles | 3½ |
| 160 miles and over 100 miles | 4 |
| 200 miles and over 160 miles | 4½ |

And that said tariff last mentioned is applicable over the lines of said Georgia & Florida Railroad Company in the State of Florida.

10. That the Savannah & Atlanta Railway Company, by its tariff I. C. C. No. 115, effective July 14, 1930, (and which has only since the last hearing herein come to the attention of these interveners) published a scale of rates for the transportation of logs from all stations on its lines to Warrenton, Sardis and Newington, Georgia, which is as follows:

| | Cents per 100 lbs. |
|---|---|
| 25 miles and under | 2½ |
| 50 miles and over 25 miles | 3 |
| 75 miles and over 50 miles | 3½ |

[fol. 446] 10a. That the Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 8, effective August 10, 1932, (and which has only since the last hearing herein come to the attention of these interveners) published a scale of rates for the transportation of ash, oak, cypress and poplar logs from stations between and including Branchville, Virginia, and Littleton, North Carolina, to Boykins, Virginia, and from stations between and including Severn, North Carolina, and Lewiston, North Carolina, to Boykins, Virginia, which is $2.50 per 1,000 feet and requires a minimum carload of 4,000 feet. That the distance from Littleton to Boykins is 44.7 miles and the distance from Lewiston to Boykins is 35 miles and the record shows that these logs weigh from ten to fourteen pounds per foot (R. 1585-1586). That said rate is therefore approximately the same as the Cummer scale for said distances and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

10b. That the Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 9, effective December 11, 1932, (after the last hearing herein) published a scale of rates for the transportation of gum logs

from Fitz Siding, North Carolina, to Norfolk, Virginia, a distance of 61 miles, which is 3½ cents per 100 pounds and which requires a minimum carload of 80,000 pounds. That said rate is approximately the same as the Cummer scale for said distance and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

[fol. 447] 11. That the Southern Railway Company, after the last hearing herein, by Supplement No. 7 to its tariff I. C. C. No. 10425, effective December 31, 1932, published a scale of rates for the transportation of logs from all C. N. O. & T. P. stations to Knoxville, Tennessee, and from all Southern Railway stations to Dayton, Tennessee, and from all Southern Railway stations to Fayette, Alabama, which is expressed in lump sum terms per carload, regardless of weight, and which is as follows:

| | |
|---|---|
| 25 miles an under | $12.50 per carload |
| 50 miles and over 25 miles | 15.00 per carload |
| 75 miles and over 50 miles | 17.50 per carload |
| 100 miles and over 75 miles | 20.00 per carload |

12. That said tariffs above mentioned and the scales of rates therein and hereinabove set forth, are now in force and effect and applicable to the transportation of logs over the lines of the carriers therein mentioned, and are in addition to the scales of rates which were shown at the last hearing in this proceeding to have been in force and effect.

13. That the second report of this Interstate Commerce Commission on further hearing, dated January 9, 1933, on Sheet 3 states that these reduced rates established in South-[fol. 448] western territory "should expire by limitation December 31, 1932", whereas the testimony shows, without contradiction, that the Southwestern Freight Bureau had assented to a proposal to extend the effective dates of those rates one year beyond that expiration date so that said rates would remain in effect throughout the year 1933. That by various tariffs, filed since the last hearing herein, said expiration date has been extended to December 31, 1933, and it clearly appears, both from the record in this proceeding and from the tariffs on file with said Interstate Commerce Commission, at the time of the making of said report, that

the said reduced rates in Southwestern territory would not and did not expire by limitation December 31, 1932.

14. That said second report of this Interstate Commerce Commission on further hearing states on Sheet 5 that "all of these (reduced) rates apply in the western portion of southern territory and none in the eastern portion". This statement is inaccurate. The evidence shows that the reduced rates apply in Georgia (R. 1448), and are applicable between all stations in Florida on the St. Louis-San Francisco Railroad (Exhibit 134). We have likewise herein-[fol. 449] above shown that they are applicable between all stations in Florida on the Louisville & Nashville Railroad. The record shows that reduced rates, comparable to the Cummer scale, have been established to Charleston, S. C. (R. 1464, 1465, 1467), and we have hereinabove shown that the Atlantic Coast Line Railroad itself has established such reduced rates, comparable to the Cummer scale, to Charleston. We have hereinabove shown rates to Augusta and Waynesboro, Georgia (both of which points are substantially directly North of Jacksonville, Florida), on the Central of Georgia Railway Company; and rates applicable in Florida and Georgia on the Georgia & Florida Railroad which are substantially the same as the Cummer scale and all of which are in effect with the permission of the Interstate Commerce Commission. That these reduced rates are now in effect in every single state in the South, including Florida, and the report is clearly inaccurate and misleading with respect to the widespread and general nature of their application.

15. That said second report of this Interstate Commerce Commission on further hearing at sheet 5 asserts that all of these newly reduced rates, "except those of the Nashville, Chattanooga and St. Louis and some of those of the Southern, apply only if the manufactured produce moves outbound over the line of the carrier which moves the logs [fol. 450] inbound". This is incorrect (R. 1450-1466, see also Exhibit 161 showing twenty tariffs of various railroads which apply the new rates locally as signified by the symbol "L" on said exhibit). At sheet 7 the report asserts that "while these (reduced) rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

Substantially similar statements are repeated in that report at sheet 17. The inclusion by the Interstate Commerce Commission of these matters in the report is inconsistent. It should be observed (R. 1530) that the Florida Lumber companies, interveners, in this proceeding offered to prove that in practical operation and effect the Cummer scale as applied in Florida is tantamount to a transit scale in that the Atlantic Coast Line Railroad got the outbound movement of lumber under the Cummer scale and after some argument (R. 1530-1532) the Examiner ruled that shipments of outbound lumber were not within the issues in the proceeding and refused to hear this testimony, to which ruling exceptions were taken by the interveners. The same offer was repeated for the same purpose and again refused (R. 1605). And again when the Traffic Manager of the [fol. 451] Atlantic Coast Line Railroad was on the witness stand, these interveners on cross-examination offered to prove the same thing by him and that he had testified to that effect in another proceeding, and again this testimony was refused (R. 1784). Yet the Interstate Commerce Commission in its report attempts to distinguish between the Cummer Scale and these reduced rates on this basis. Upon further hearing, if the same be granted, these movants again offer to prove that the Cummer scale is in practical operation and effect a transit rate in that the Atlantic Coast Line Railroad secures substantially 100 per cent of the outbound movement of the lumber products from the mills to which the logs are moved, and that as regards the trainload shippers of logs such outbound movement is required to move over the Atlantic Coast Line Railroad by service contracts existing between said railroad and said shippers.

16. That said second report of said Interstate Commerce Commission on further hearing at sheet 16 states that there is "little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles". The evidence disclosed numerous hauls of thirty to fifty miles by truck and even hauls of seventy miles in length. The report is incorrect in this statement and it is apparent, in a flat country such as Florida with the existing good roads which have been shown in evidence here, that if the rates prescribed by the Interstate Com- [fol. 452] merce Commission herein become effective this

competition will be increased and the hauls by truck lengthened. The testimony of the witness Roland (R. 1580-1582) and the witness Buffum (R. 1528) is to this effect, and that conclusion is inevitable. Apparently the Interstate Commerce Commission has considered this reopened proceeding as a petition for the establishment of the newly reduced rates in Florida for the purpose of meeting truck competition, whereas these interveners have never requested the Interstate Commerce Commission to do more than not to invade the domain of the State of Florida.

17. That said second report of said Interstate Commerce Commission on further hearing at sheet 18 asserts that "The monthly movement since February 10, 1931, when the Cummer scale was re-established, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the re-established substantially lower Cummer scale has had no effect on the volume of rail movement." Disregarding the fact that the Cummer scale was not re-established in February, 1931, and that trainload movements are not included in the evidence upon this subject, it is apparent that if the volume of traffic was not substantially less in 1932 than it was in 1930 then the traffic is an exception to the general rule with respect to traffic during those two years and that the only way to account for its being an exception to the general rule is the [fol. 453] existence of the Cummer scale. It is indeed remarkable, with the instability and uncertainty which this proceeding has cast upon log rates in Florida, that the volume of traffic even under the Cummer scale was maintained.

18. That said second report of said Interstate Commerce Commission on further hearing at sheets 16 and 17 asserts that the prior report found that the circumstances and conditions surrounding the transportation of logs in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over the lines of the Atlantic Coast Line Railroad. The only basis of this statement is the fact that in certain other proceedings arbitraries have been prescribed for the hauls within Florida. The report then points out

the highest arbitraries that had ever been prescribed, and omits to mention the fact that in other proceedings no arbitraries whatsoever have been prescribed. The report overlooks entirely the evidence of the witnesses, Buffum and True, who testified with respect to the circumstances and conditions surrounding the transportation of those logs intrastate in Florida and in other states where the newly reduced rates are in effect, and pointed out the matters in which the circumstances and conditions surrounding the transportation of such logs intrastate in Florida were more favorable than in those other states. That testimony was not contradicted anywhere in the record.

[fol. 454] 19. That the defendant Atlantic Coast Line Railroad Company controls the Louisville & Nashville Railroad (see statement of Examiner Hoy, R. 1775-1776) through stock ownership. That the only ground upon which the Interstate Commerce Commission purports to act herein is that the Cummer scale constitutes an unjust discrimination against interstate commerce from a revenue standpoint. That the second report on further hearing herein found said newly reduced rates to be on substantially the same level as the Cummer scale, and these interveners insist that the evidence in this proceeding shows that due to the heavy loading of the cars, said newly reduced rates are in practical operation and effect lower than said Cummer scale. That said Louisville & Nashville Railroad, controlled through stock ownership as aforesaid by said Atlantic Coast Line Railroad, with the permission of this Interstate Commerce Commission, has applied and is applying a scale of rates in Florida and elsewhere lower than said Cummer scale, while at the same time said Atlantic Coast Line Railroad insists upon, and this Interstate Commerce Commission has directed, the charging of a rate in Florida which in practical operation and effect is from two to three times as high as said log rates now in effect on said Louisville & Nashville Railroad in Florida.

[fol. 455] 20. And these movants aver (as at all times in these proceedings they have averred) that this Interstate Commerce Commission is without the power, authority or jurisdiction to prescribe intrastate rates for the transpor-

tation of logs in intrastate commerce in Florida in this proceeding; also, that this Interstate Commerce Commission has not made and cannot upon the record in this proceeding make the findings which would justify the invasion of the domain of the State of Florida, and that this Interstate Commerce Commission has not justified and cannot upon this record justify the invasion of the domain of the State of Florida to fix intrastate rates in Florida, and that the action of this Interstate Commerce Commission in attempting so to do was and is arbitrary and unlawful; that the matters and things set forth in the preceding paragraphs of this motion constitute additional evidence (newly discovered by these movants and overlooked by this Interstate Commerce Commission) and further demonstrate that the said order of the Interstate Commerce Commission in invading the domain of the State of Florida as aforesaid was not and is not justified, and was and is arbitrary and unlawful and ought not to have been entered, and having been entered ought to be set aside by this Interstate Commerce Commission.

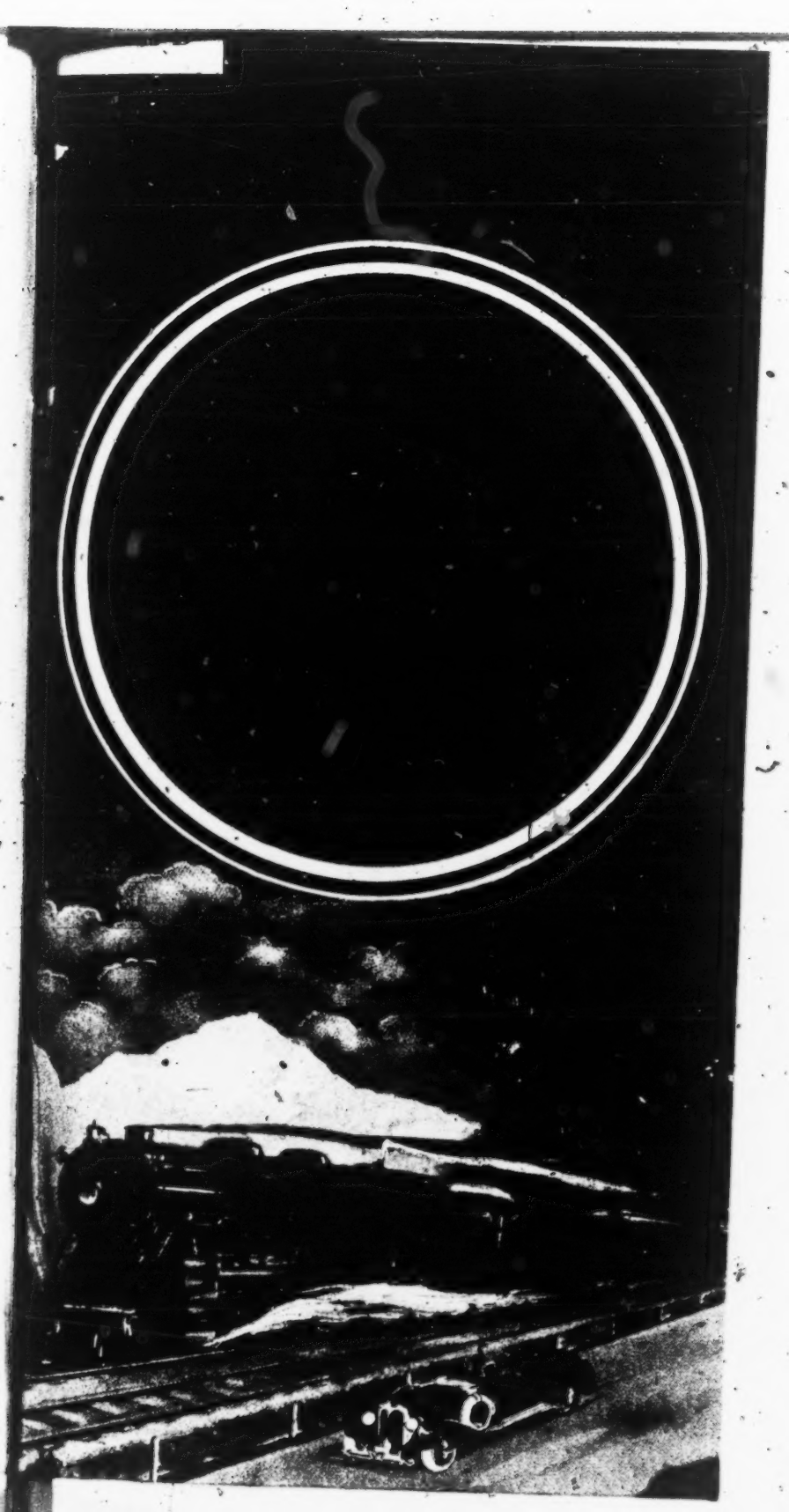
[fol. 456] 21. And these petitioners hereby re-assert and re-affirm each and every of the matters and things heretofore asserted and affirmed in the several petitions for rehearing and re-consideration heretofore filed herein by these petitioners.

Wherefore, your petitioners move that these proceedings be reopened for further hearing and reconsideration; and that the outstanding order herein prescribing rates to be applied for the transportation of logs intrastate in Florida be annulled and set aside and that these proceedings be dismissed.

Respectfully submitted, The State of Florida, by Cary D. Landis, Its Attorney General. Florida Railroad Commission, by Theo. T. Turnbull, Special Counsel.

Tallahassee, Florida, February 4th, 1933.

(Here follows Exhibit D, side folio 457)



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| H20 | Akron, | Ohio | 255 |
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| N13 | Albany, | Ga. | 15 |
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| L8 | Albuquerque, | N. M. | 27 |
| O15 | Alexandria, | La. | 23 |
| I22 | Alexandria, | Va. | 24 |
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| J16 | Alton, | Ill. | 30 |
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| L10 | Amarillo, | Tex. | 43 |
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| I18 | Anderson, | Ind. | 40 |
| I22 | Annapolis, | Md. | 13 |
| H19 | Ann Arbor, | Mich. | 27 |
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| G17 | Appleton, | Wis. | 25 |
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| K13 | Arkansas City, | Kan. | 14 |
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| G22 | Auburn, | N. Y. | 37 |
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| F24 | Biddeford, | Me. | 18 |
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| J18 | Bloomington, | Ind. | 18 |
| K20 | Bluefield, | W. Va. | 19 |
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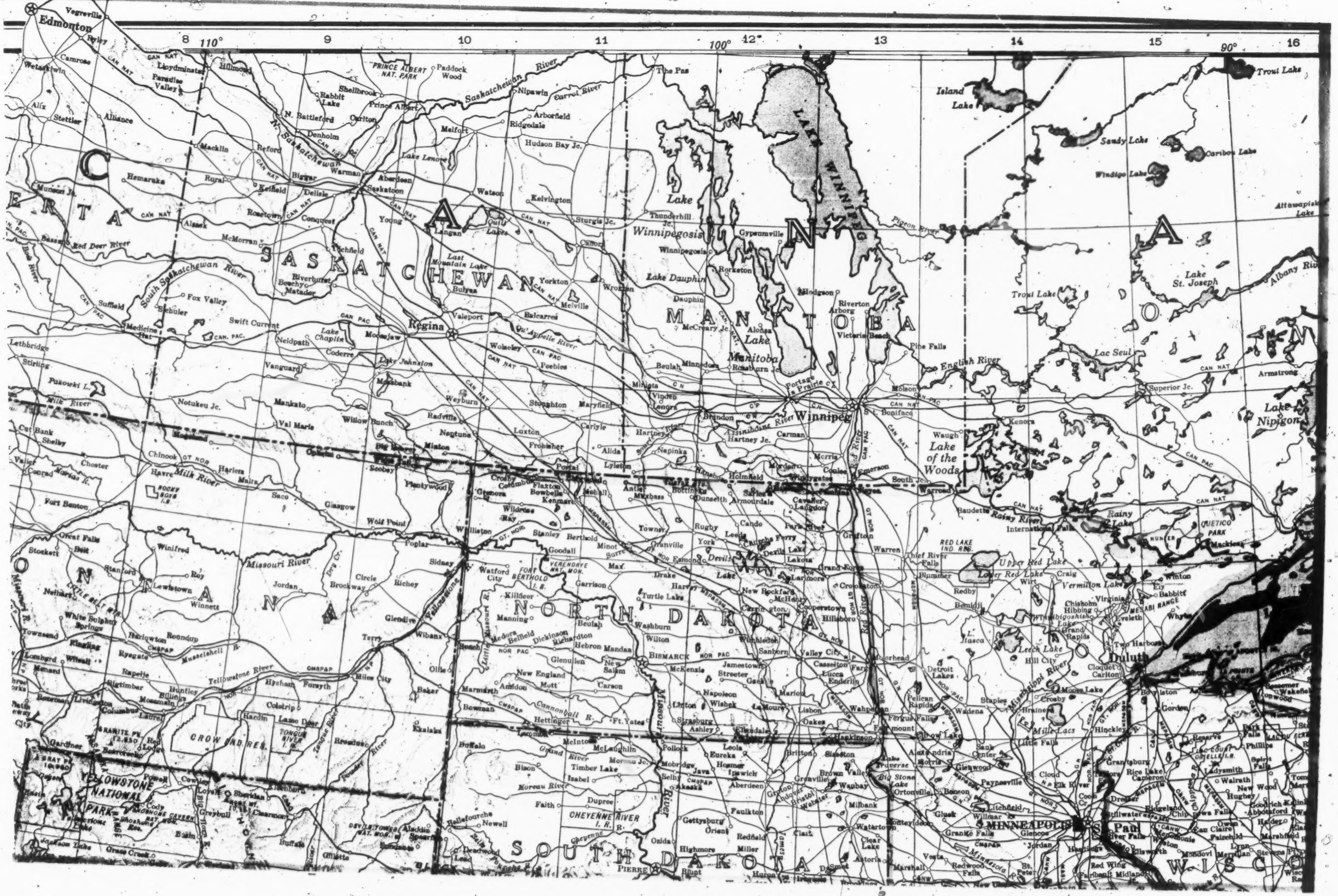
8
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Edmonton
Vegreville
Camrose
Wetaskiwin
Lloydminster
Hillmond
Paradise Valley
Alix
Stettler
Alliance
Mackiln
Reford
Hemaruka
Rural
Keifield
Bigger
Warman
Aberdeen
Saskatoon
Delisle
Watson
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Rosetown
Conquest
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Quill Lakes
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Notukeu Jc.
Mankato
Val Marie
Willow Bunch
Weyburn
Radville
Neptune
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Carlyle
Luxton
Frobisher
Alida
Cut Bank
Shelby
Chester
Valier
Conrad
Morias L.
Chinook
Havre
Milk River
Harlem
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Saco
Glasgow
Scobey
Opheim
Big Beaver
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Poplar
Wolf Point
Fort Benton
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Belt
Winifred
Roy
Stanford
Lewistown
Nellhart
Winnett
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Jordan
Brockway
Circle
Richey
Sidney
Dry Cr.
Watford City
Killdeer
Manning
Beulah
Washburn
Wilton
Max
Garrison
Turtle Lake
Drake
Harvey
Carrington
New Rockford
McHenry
Cooperstown
Hillsboro
Grand Forks
Larimore
Crookston
Warren
Thief River Falls
Plummer
Redby
Bemidji
Upper Red Lake
Lower Red Lake
Wirt
Craig
Vermilion Lake
Winton
Ely
Babbitt
Virginia
Eveleth
Chisholm
Hibbing
Grand Rapids
L. Itasca
Leech Lake
Hill City
Two Harbors
Duluth
Cloquet
Carlton
Detroit Lakes
Moorhead
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Crosby
Brainerd
Moose Lake
Mille Lacs
Little Falls
Elbow Lake
Alexandria
Morris
Glenwood
Sauk Center
Benson
Ortonville
Big Stone Lake
Lake Traverse
Milbank
Watertown
Clear Lake
Willmar
Litchfield
Gluek
Granite Falls
Glencoe
Jordan
Hastings
Redwood Falls
Vesta
Marshall
Minnesota
St. Peter
Red Wing
Faribault
Midland
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Rochester
Austin
Albert Lea
Owatonna
Northfield
Faribault
Lake City
Wabasha
Winona
La Crosse
Dodge
Mantorville
Zumbrota
Pine Island
Cannon Falls
Hastings
Red Wing
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English River
Pine Falls
Molson
Kenora
Waugh
Lake of the Woods
Rainy River
International Falls
Rainy Lake
Quetico Park
Mackies
Fort Frances
Atikokan
Nipigon
Trout Lake
Island Lake
Sandy Lake
Caribou Lake
Windigo Lake
Attawapiskat Lake
Albany River
Lake St. Joseph
Trout Lake
Pigeon River
Lake Winnipegosis
Winnipegosis
Gypsumville
Rorketon
Lake Dauphin
Dauphin
Hodgson
Riverton
Arborg
Victoria Beach
Lake Manitoba
McCreary Jc.
Alonsa
Minnedosa
Rosaburn Jc.
Beulah
Minnedosa
Portage la Prairie
Miniota
Virden
Lenore
Brandon
Winnipeg
St. Boniface
Carman
Hartney Jc.
Hartney
Arrinbidang River
Napinka
Alida
Lyleton
Pierson
Boissevain
Holmfield
Melita
Deloraine
Morden
Winkler
Manitou
Pilot Mound
Crystal City
Cartwright
Killarney
Souris
Glenboro
Treherne
Holland
Carberry
Neepawa
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Rapid City
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Strathclair
Russell
Binscarth
Foxwarren
Birtle
Minto
Oak River
Rivers
Brandon
Virden
Melita
Deloraine
Boissevain

15 80° 16 17 18 19 80° 20 21 22 23 70°

Longitude West of Greenwich

Trout Lake
Sandy Lake
Caribou Lake
Windigo Lake
Winisk Lake
Attawapiskat River
Attawapiskat Lake
Albany River
Lake St. Joseph
Ogoki River
Lac Seul
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Long Lake
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Nipigon
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Armstrong
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Moose River
Missinaibi River
Mattagami River
Abitibi River
Kapuskasing R.
Cochrane
Timmins
Abitibi Lake
Franz
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Chapleau
Obakamiga L.
Lake Timiskaming
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Lake Timagami
Capreol
Sudbury
Sault Ste. Marie
Lake Nipissing
North Bay
Mattawa
Pembroke
Ottawa
Hull
Renfrew
Perry Sound
Scotia
Wallace
Parry Sound
Coboconk
Peterborough
Belleville
Kingston
Lindsay
Lake Simcoe
Orillia
Barrie
Toronto
Lake Ontario
Rochester
Auburn
Syracuse
Fairville
Cooperstown
Utica
Schenectady
Albany
Troy
Saratoga
Glens Falls
Whitehall
Rutland
Burlington
Montpelier
Barre
Woodstock
Windsor
Claremont
Concord
Manchester
Nashua
Lowell
Lawrence
Boston
Worcester
Springfield
Hartford
New Haven
Bridgeport
Stamford
New York
Newark
Trenton
Philadelphia
Wilmington
Baltimore
Washington
Richmond
Norfolk
Raleigh
Charleston
Columbia
Atlanta
Augusta
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Savannah
Jacksonville
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Tampa
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Mobile
Montgomery
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Tuscaloosa
Meridian
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Vicksburg
Natchez
New Orleans
Baton Rouge
Lafayette
Houston
Galveston
Beaumont
Port Arthur
Lake Charles
Shreveport
Texarkana
Little Rock
Memphis
Nashville
Knoxville
Chattanooga
Atlanta
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Cincinnati
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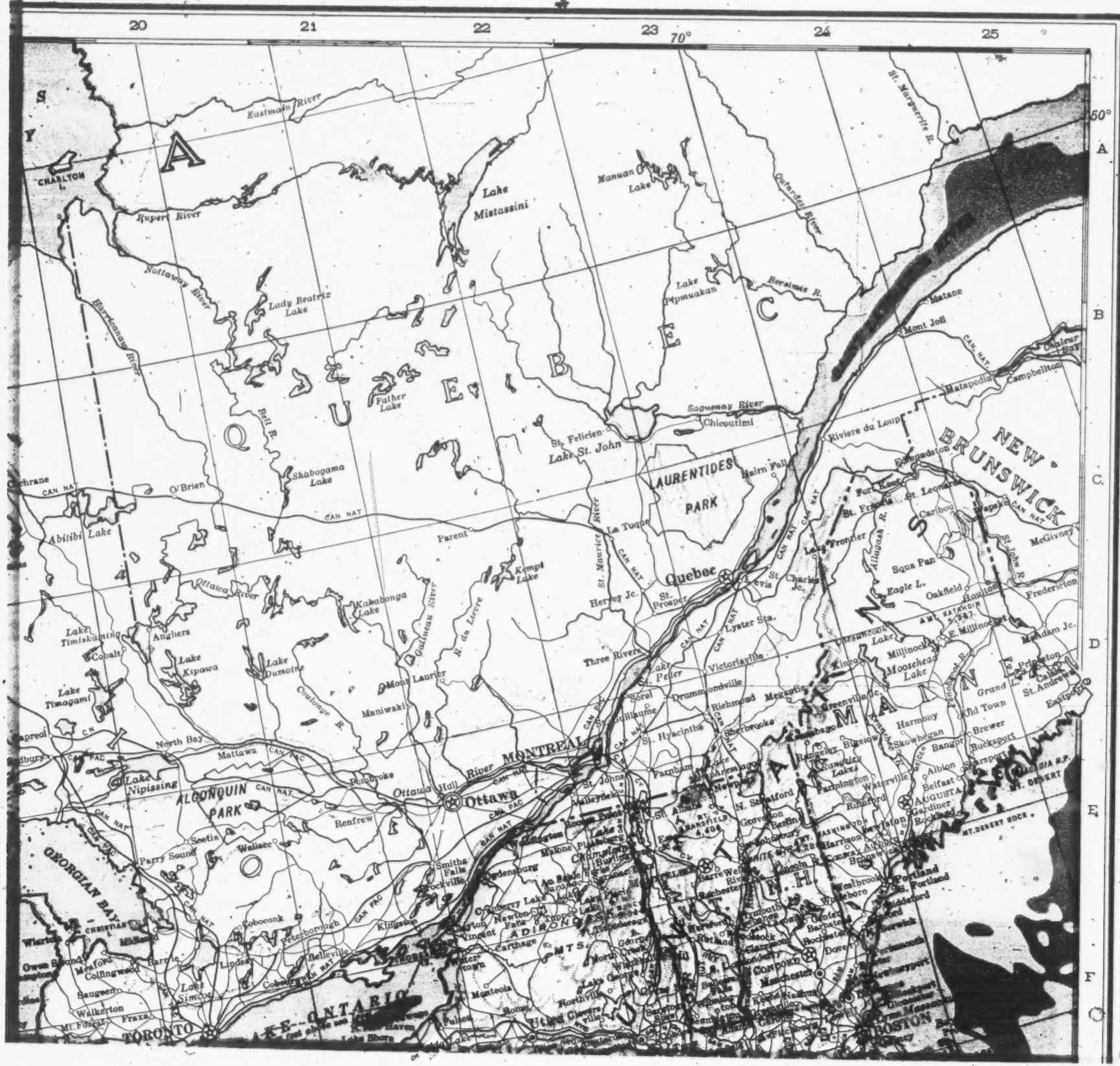
Utica
Albany
Troy
Schenectady




| Index | Town | State | Pop. in Thousands |
|---|---|---|---|
| J19 | Lexington, | Ky. | 46 |
| I19 | Lima, | Ohio | 42 |
| I16 | Lincoln, | Ill. | 13 |
| I13 | Lincoln, | Neb. | 76 |
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| I18 | Logansport, | Ind. | 19 |
| L2 | Long Beach, | Calif. | 142 |
| H23 | Long Branch, | N.J. | 18 |
| H20 | Lorain, | Ohio | 45 |
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| J18 | Louisville, | Ky. | 308 |
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| J21 | Lynchburg, | Va. | 41 |
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| G14 | Mankato, | Minn. | 14 |
| H19 | Mansfield, | Ohio | 34 |
| I20 | Marietta, | Ohio | 14 |
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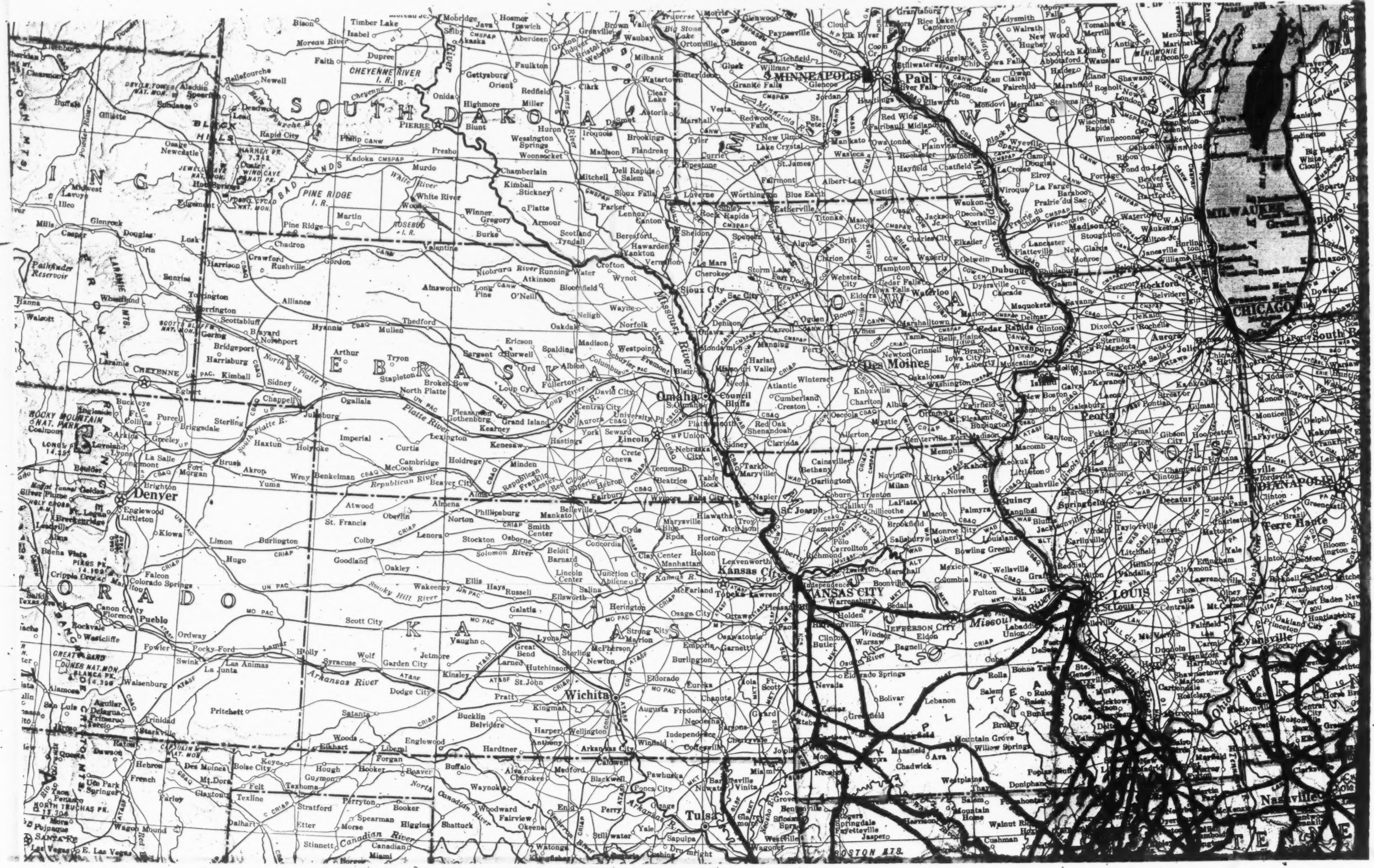
SOUTH DAKOTA
NEBRASKA
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MINNESOTA
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Pamlico Sound
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INDIANA
ILLINOIS
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TENNESSEE
WEST VIRGINIA
VIRGINIA
PENNSYLVANIA
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Warren
Sharon
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Butler
Kittanning
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Bedford
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Gettysburg
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Jersey City
Elizabeth
Perth Amboy
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Camden
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Millville
Vineland
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Pocomoke
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Franklin City
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Black Mts.
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Mt. Pisgah
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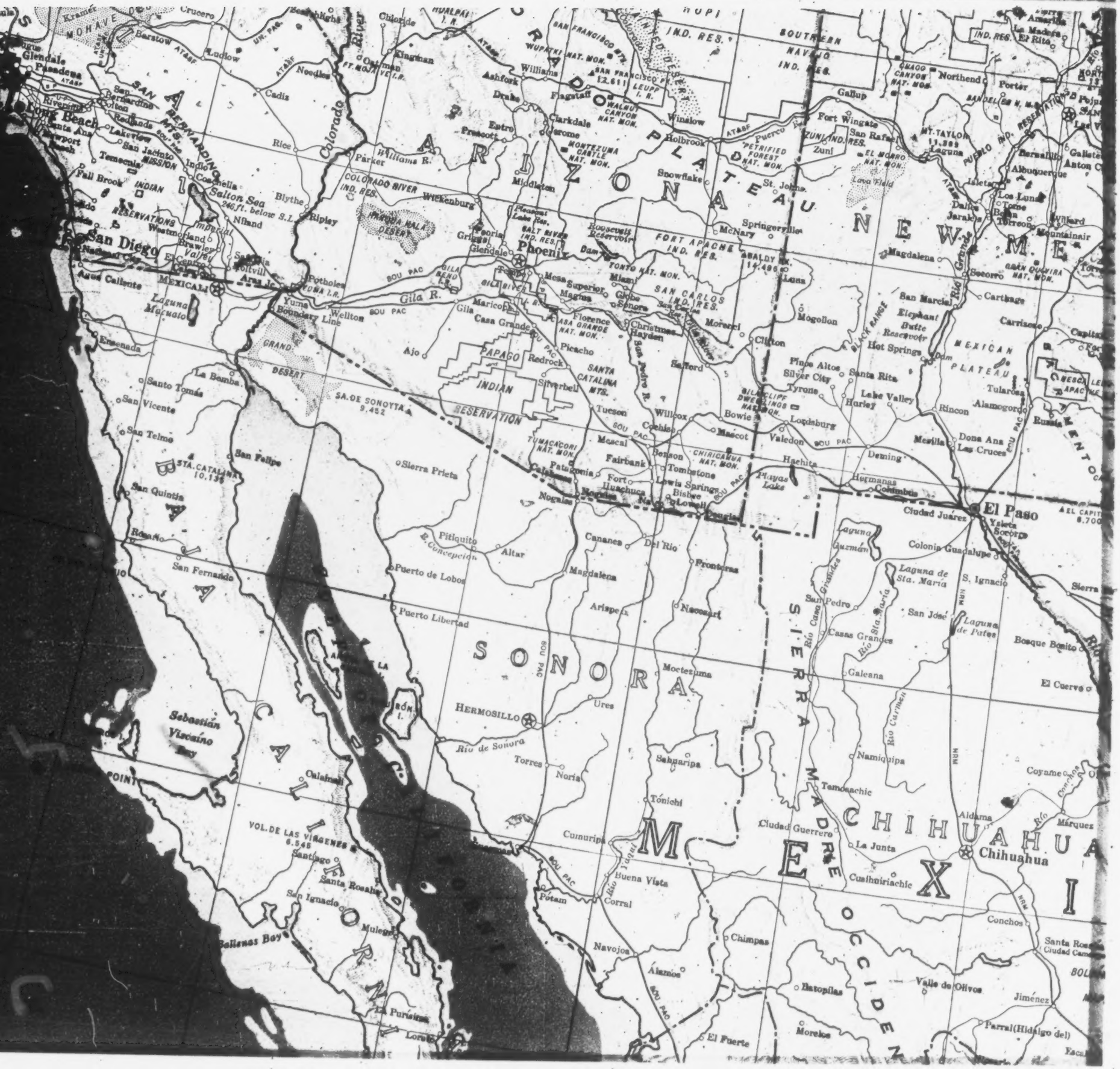
Mt. Katahdin
Mt. Marcy
Mt. Greylock
Mt. Monadnock
Mt. Washington
Mt. Whiteface
Mt. Mansfield
Mt. Equinox
Mt. Ascutney
Mt. Lafayette
Mt. Chocorua
Mt. Kearsarge
Mt. Moosilauke
Mt. Cardigan
Mt. Sunapee
Mt. Tom
Mt. Holyoke
Mt. Wachusett
Mt. Greylock
Mt. Everett


ARIZONA
NEW MEXICO
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CHIHUAHUA
SIERRA MADRE OCCIDENTAL
Colorado River
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Rio Grande
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Ciudad Juárez
Chihuahua
HERMOSILLO
Nogales
Yuma
Mexicali
Ensenada
Guaymas
Nacozari
Agua Caliente
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Tumacacori Nat. Mon.
Chiricahua Nat. Mon.
Gila Cliff Dwellings Nat. Mon.
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Casa Grande Ruins Nat. Mon.
Wupatki Nat. Mon.
Sunset Crater Nat. Mon.
El Morro Nat. Mon.
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Bandelier Nat. Mon.
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Organ Pipe Cactus Nat. Mon.
Saguaro Nat. Mon.
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Pasadena
Glendale
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Laguna Mercado
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Muddy R.
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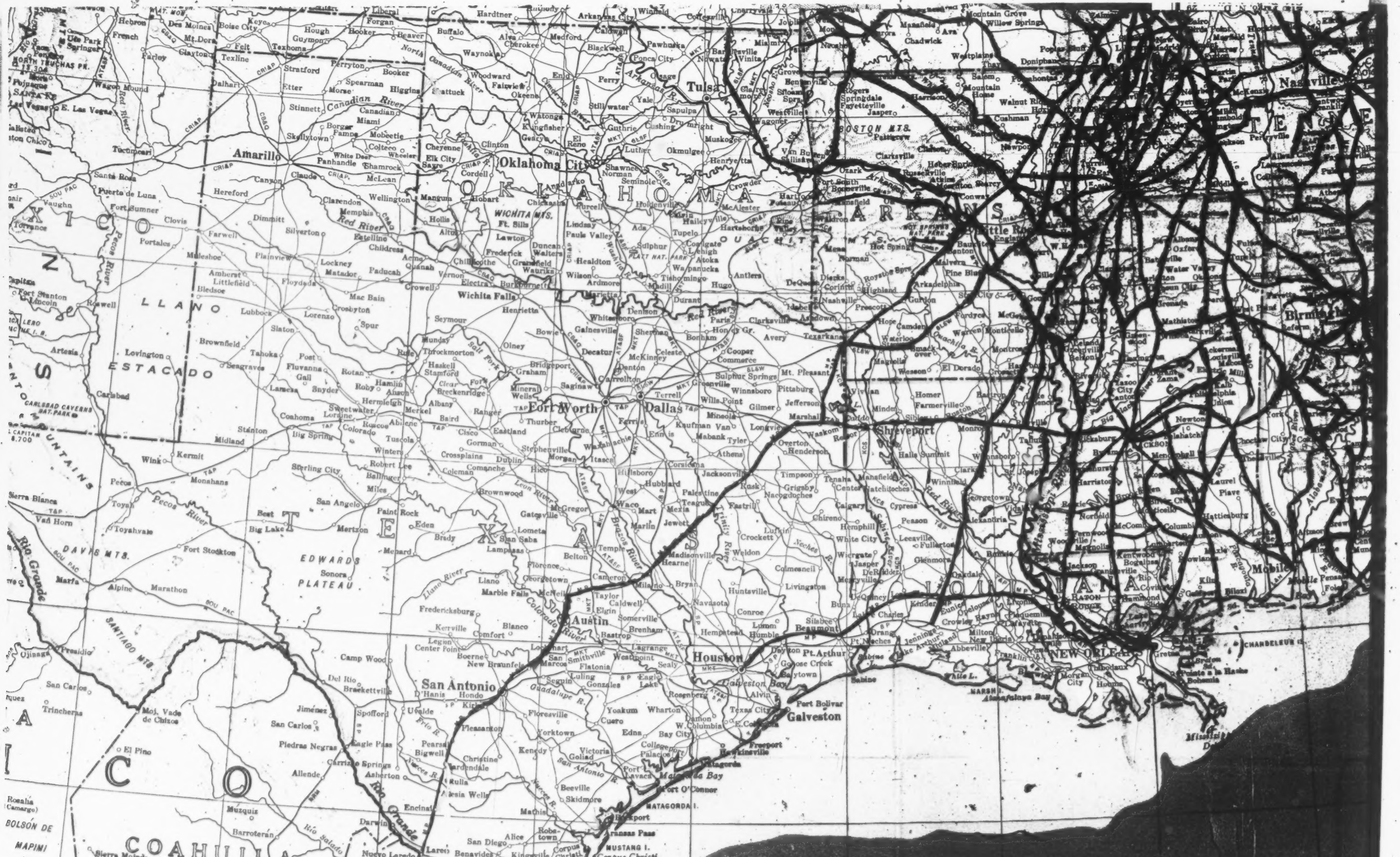
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Sam Rayburn Res.
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San Antonio R.
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Mustang I.
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Moj. Vade de Chizos
El Pino
Muzquiz
Barroteran
Rosalia (Camargo)
Nuevo Laredo
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Bayou Du Large
Bayou Cane
Bayou Blue
Bayou Gauche
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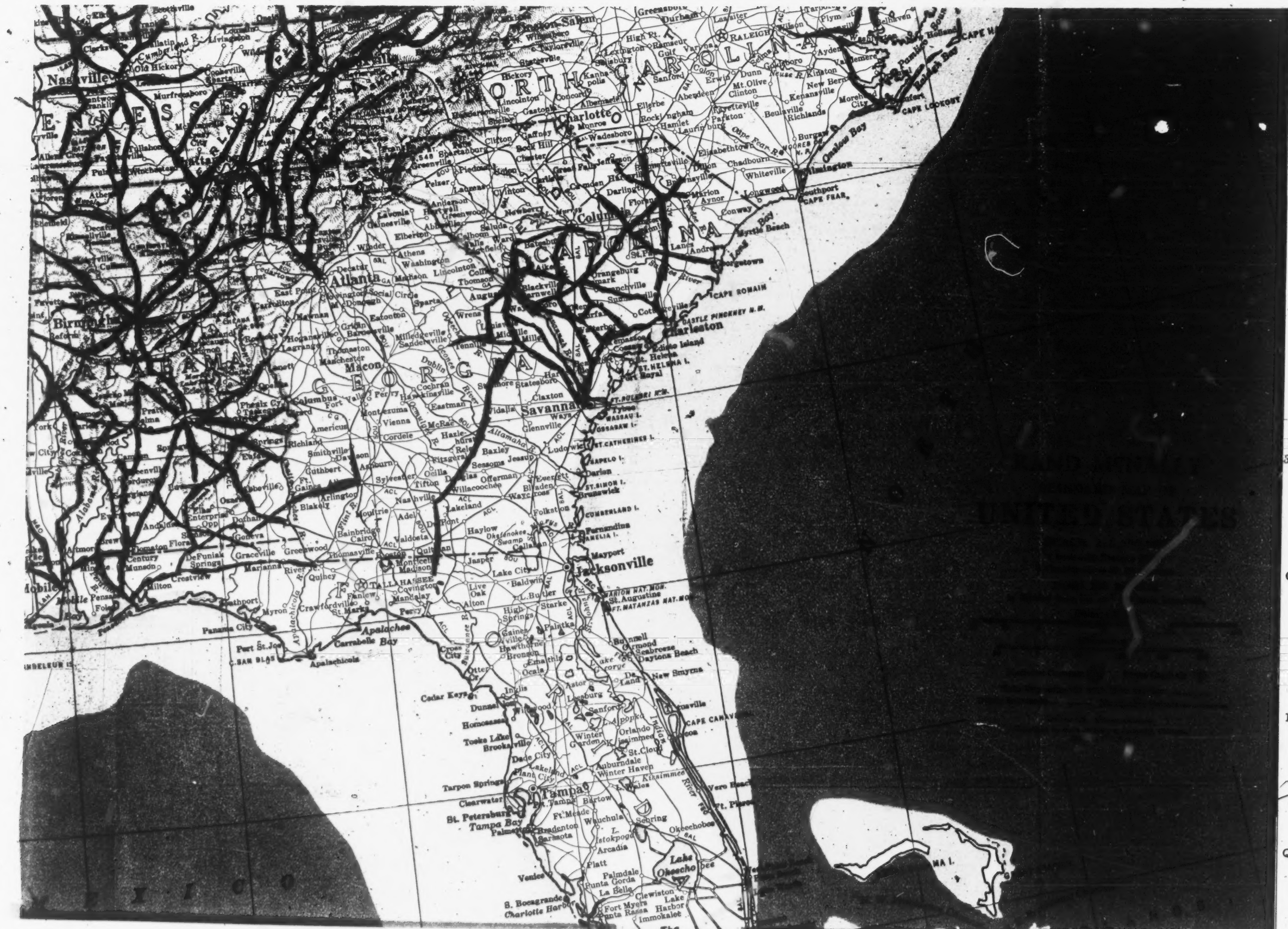
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Cape Romain
Cape Fear
Cape Lookout
Onslow Bay
Pamlico Sd.
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Lake Okeechobee
Lake Kissimmee
Lake Istokpoga
Lake Apopka
Lake George
Okefenokee Swamp
Everglades
Florida Keys
Key West
Gulf of Mexico
Atlantic Ocean
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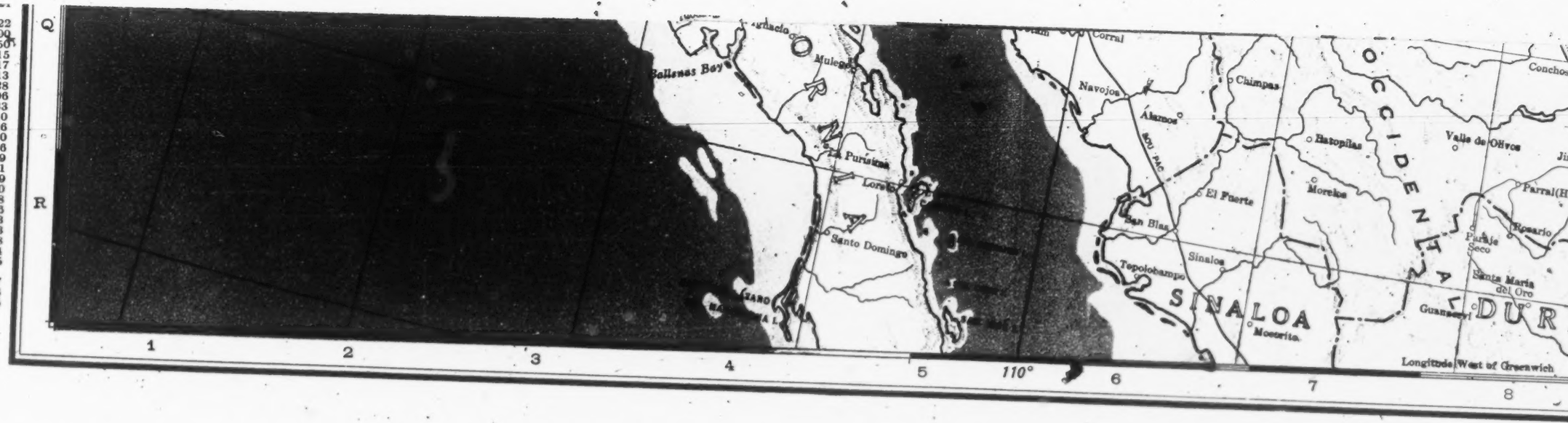
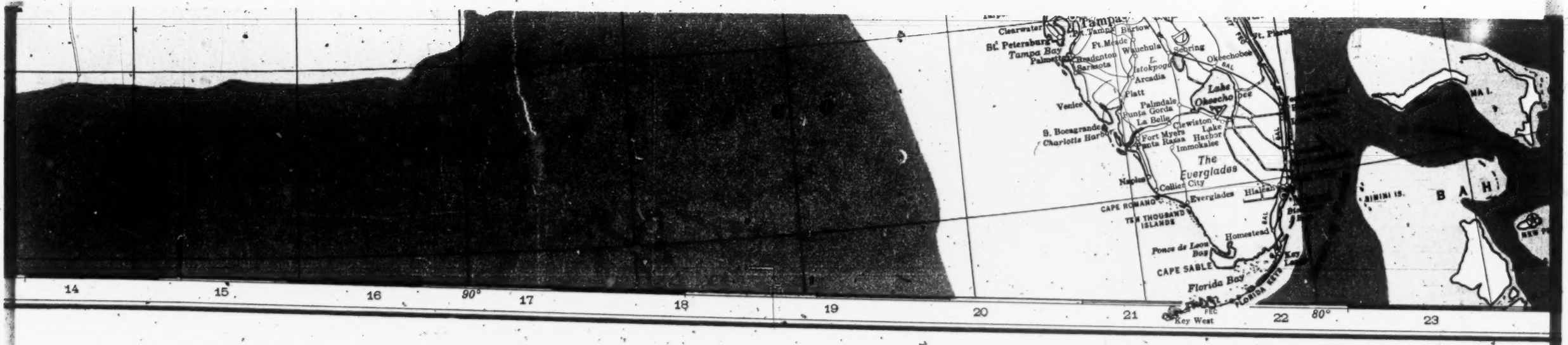
|---|---|---|
| J14 | Kansas City, Kan. | 122 |
| J14 | Kansas City, Mo. | 400 |
| H17 | Kenosha, Wis. | 50 |
| I15 | Keokuk, Iowa | 15 |
| I16 | Kewanee, Ill. | 17 |
| R21 | Key West, Fla. | 13 |
| G23 | Kingston, N. Y. | 28 |
| L19 | Knoxville, Tenn. | 106 |
| I18 | Kokomo, Ind. | 33 |
| G15 | La Crosse, Wis. | 40 |
| I17 | La Fayette, Ind. | 26 |
| N19 | Lagrange, Ga. | 20 |
| P15 | Lake Charles, La. | 16 |
| Q21 | Lakeland, Fla. | 19 |
| H20 | Lakewood, Ohio | 71 |
| I19 | Lancaster, Ohio | 19 |
| H22 | Lancaster, Pa. | 60 |
| G18 | Lansing, Mich. | 78 |
| H17 | La Porte, Ind. | 16 |
| Q11 | Laredo, Tex. | 33 |
| H16 | La Salle, Ill. | 13 |
| O17 | Laurel, Miss. | 18 |
| J14 | Lawrence, Kan. | 14 |
| F24 | Lawrence, Mass. | 85 |
| I14 | Leavenworth, Kan. | 17 |
| H22 | Lebanon, Pa. | 26 |
| E24 | Lewiston, Me. | 35 |

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Encinal
Darwin
Barroteran
Río Salado
COAHUILA
Sierra Mojada
Nuevo Laredo
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Robstown
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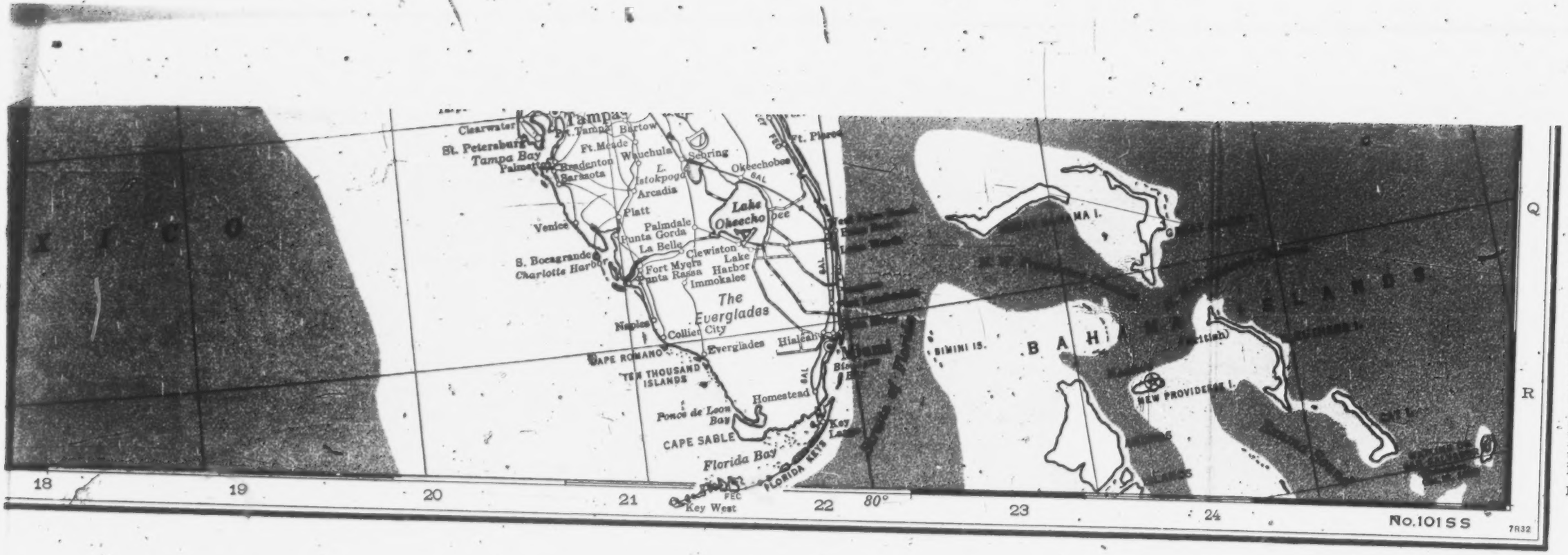


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| H21 | Warren, Pa. | 15 |
| I22 | Washington, D.C. | 487 |
| I20 | Washington, Pa. | 26 |
| G24 | Waterbury, Conn. | 100 |
| H15 | Waterloo, Iowa | 46 |
| F22 | Watertown, N.Y. | 32 |
| E25 | Waterville, Me. | 15 |
| H17 | Waukegan, Ill. | 33 |
| G17 | Waukesha, Wis. | 17 |
| F16 | Wausau, Wis. | 24 |
| O20 | Waycross, Ga. | 16 |
| G17 | West Allis, Wis. | 35 |
| G24 | Westfield, Mass. | 20 |
| Q22 | West Palm Beach, Fla. | 27 |
| I20 | Wheeling, W. Va. | 62 |
| K13 | Wichita, Kan. | 111 |
| M12 | Wichita Falls, Tex. | 44 |
| H22 | Wilkes-Barre, Pa. | 87 |
| H22 | Williamsport, Pa. | 46 |
| G24 | Willimantic, Conn. | 12 |
| I23 | Wilmington, Del. | 107 |
| L22 | Wilmington, N.C. | 32 |
| K22 | Wilson, N. C. | 13 |
| G15 | Winona, Minn. | 21 |
| K21 | Winston-Salem, N. C. | 75 |
| F24 | Worcester, Mass. | 195 |
| H19 | Wyandotte, Mich. | 28 |
| D3 | Yakima, Wash. | 22 |
| H23 | Yonkers, N. Y. | 135 |
| I22 | York, Pa. | 55 |
| H20 | Youngstown, Ohio | 170 |
| I20 | Zanesville, Ohio | 36 |

Coca-Cola

9 MILLION A DAY

EVEN Bright Angel Trail, in the Grand Canyon of Arizona, leads to a soda fountain and ice-cold Coca-Cola.

*It had to be good to get where it is.*

[fol. 458] [File endorsement omitted.]

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[fol. 459] IN UNITED STATES DISTRICT COURT

In Equity. No. 690

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREEN, AND TUCKER SAVAGE, as and Constituting Florida Railroad Commission, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 691

WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 695

F. S. BUFFUM COMPANY, INC., Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction, Bill of Complaint and Supplemental Bill of Complaint

ORDER CONSOLIDATING CAUSES—Feb. 24, 1933

The three above stated causes came on this day on Petition for Injunction, the following counsel appearing:

H. P. Adair for The Wilson Cypress Co. et al.
F. C. Hillyer for F. S. Buffum Co., Inc.
T. T. Turnbull for The State of Florida.
J. V. Norman for The Wilson Lumber Co.
Elmer B. Collins for The United States.
J. Stanley Payne for The Interstate Commerce Commission.

Robt. C. Alston for The Atlantic Coast Line Railroad Co.
J. J. E. Anderson for The Georgia Public Service Commission.

Thereupon the following order of Consolidation was granted:

[fol. 460] "It appearing that the foregoing bills attack the same orders of the Interstate Commerce Commission and involve the same subject matter and depend upon the same evidence, all parties consenting, it is ordered that they be consolidated into one bill under the style first stated above, and that the case hereafter proceed as a single cause.

This 24th day of February, 1933.

Sam'l H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

Mr. Adair thereupon moved the Court for leave to file Supplemental Bills of Complaint, which was granted by verbal order of the Court; and thereupon Mr. Alston moved the Court for leave to file Intervention on behalf of The Atlantic Coast Line Railroad Company, which was granted by verbal order of the Court; and Mr. Anderson, on behalf of The Georgia Public Service Commission, moved the Court for leave to Intervene, which was also granted by verbal order of the Court.

Thereupon the cause proceeded on the introduction of evidence and argument. After hearing the evidence and argument thereon, the Court thereupon filed the following Findings of Fact and Conclusions of Law:

[fol. 461] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the supplemental bill filed therein against it answers and says:

I

United States admits for the purposes of this suit that the allegations contained in the opening paragraph and in paragraph 1 of the supplemental bill are true, with this exception: it denies the conclusion in said paragraph 1 that "the said Interstate Commerce Commission attempted to invade domain of the State of Florida and to disestablish the scale of lawful rates in force and effect for the transportation of logs" in intrastate commerce in Florida.

[fol. 462]

II

Answering paragraphs 2 and 3 of the supplemental bill, United States denies that the matters and things therein alleged are either relevant, material or competent to any issue which may properly be raised in this suit, and denies the jurisdiction of this Court to consider said allegations in determining whether the Commission's said order is lawful.

III

Answering paragraph 4, United States admits that on October 12, 1932, plaintiffs filed with said Commission their motion to set aside said order, and for further hearing, and that motion contained allegations substantially as alleged in said paragraph 4.

But United States denies that the mere fact that said Commission "permitted" said "newly reduced rates" to be filed and published constitutes, or may be construed as constituting, a determination or finding by said Commission that said rates are just, reasonable or lawful in any respect whatsoever.

IV

United States admits that the allegations contained in paragraphs 5 and 6 of the supplemental bill are true.

V

Answering paragraph 7 of the supplemental bill, United States admits that on November 21 and 22, 1932, said Commission held further hearings in its said docket No. 18364; [fol. 463] that at said hearing numerous tariffs publishing rates for the transportation of logs were introduced in

evidence; but United States denies that said tariffs constituted all the evidence introduced and received at said hearings, and for a full, complete and accurate summary of all the evidence received at said hearings the Court is respectfully referred to the summary of evidence set forth and contained in the Commission's said report of January 9, annexed as Exhibit A to the supplemental bill.

VI

United States admits that the allegations contained in paragraph 8 of the supplemental bill are true, and that Exhibits A and B to the supplemental bill are true copies of the Commission's said report and order of January 9, 1933, respectively. Further answering said paragraph 8, United States alleges that in its said report the Commission found (Exhibit A, sheets 15 and 16), among other things, as follows:

The record warrants the conclusion that truck competition and, to a lesser degree carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroad which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distance, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

[fol. 464] VII

Answering paragraph 9, United States admits that on February 8, 1933, plaintiffs filed their petition with said Commission for further hearing, and that Exhibit C to the supplemental bill is a true copy thereof; and that said petition contained allegations substantially as set forth in said paragraph 9.

VIII

United States admits the allegations contained in paragraph 10 of the supplemental bill.

IX

Answering so much of the first sentence of paragraph 11 of the supplemental bill as re-avers the allegations of the original bill in this suit, United States hereby refers to, repeats and adopts its answer heretofore filed in this cause to said original bill.

Answering the remaining allegations of said paragraph 11, consisting of subdivisions (a) to (k), inclusive, United States denies that the allegations thereof are either relevant, competent or material to any issue which may properly be raised in this suit or considered by this Court in determining whether the Commission's said order is valid or lawful; and United States alleges that the matters, things and conclusions in said subdivisions (a) to (k), inclusive, are argumentative, and, even if true, are purely for consideration by the Interstate Commerce Commission in its capacity as an administrative tribunal.

[fol. 465] X

Answering paragraph 12 of the supplemental bill, United States disclaims any knowledge whatever of the allegations therein set forth.

XI

United States denies each and every allegation made and contained in paragraphs 13 and 14 of the supplemental bill.

Except as herein expressly admitted, United States denies each and every allegation contained in the supplemen-

tal bill and in the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the supplemental bill of complaint, United States prays that the relief sought be denied and that both the supplemental bill of complaint and the original petition in said cause be dismissed for want of equity, with costs to the plaintiffs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 466] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

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[fol. 467] RECITAL AS TO ANSWER OF I. C. C.

NOTE: (Item 9). By agreement of Counsel and with the consent of the Court the answer of the Interstate Commerce Commission to the supplemental bill of complaint in Case No. 691, Wilson Cypress Lumber Company et al. v. United States et al., was taken as and stands for answer also to the supplemental bill of Complaint in Case No. 690 and 695.

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[fol. 468] [File endorsement omitted.]

[fol. 469] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY TO DENY MOTION OF PLAINTIFFS TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933.

Now comes Atlantic Coast Line Railroad Company and respectfully moves this court to deny the motion of The State of Florida and of Eugene S. Matthews, Mamie Eaton-Greene, and W. B. Douglass, as and constituting the

Florida Railroad Commission, to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

[fol. 470] 1

The additional matters set up in the supplemental bill are not sufficient to justify this court in granting the relief prayed, for that:

(a) The supplemental bill which plaintiffs propose filing shows that all the matters and things therein mentioned have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932, for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commerce Commission has found that the matters and things set up in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its docket No. 18364.

(b) That the record in this case shows that a motion to the Interstate Commerce Commission was filed by the plaintiffs herein on August 10, 1932, to postpone the effective date of the Commission's order entered July 5, 1932. Said motion was denied by said Commission by its order entered August 13, 1932; and then a motion by the plaintiffs herein was filed with the Commission for further hearing and reconsideration of said report and order of July 5, 1932, on August 17, 1932, and denied by order of the Commission entered August 25, 1932.

[fol. 471] (c) The original bill in this cause was filed by the plaintiffs herein in this court on September 9, 1932. The same came on for hearing on September 14, 1932; and after said hearing, and on October 21, 1932, the order of the Interstate Commission of July 5, 1932, as amended July 28, 1932, was suspended by the Commission and the proceeding thereunder reopened for the purpose of further hearing and for the purpose of "receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and

whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant."

(d) That the said reopened hearing was had on November 21-22, 1932; and the Commission, on full and ample evidence, has determined the issues against the plaintiffs herein, and has reaffirmed its previous findings.

(e) That thereafter, F. S. Buffum Company, Inc., an intervenor before the Interstate Commission in said proceeding, its docket No. 18364, filed its petition with the Commission for postponement of the effective date of the order and for reconsideration thereof. Said motion was considered by the Commission and denied on February 7, 1933.

[fol. 472] (f) On or about February 8, 1933, Wilson Cypress Company and Wilson Lumber Company of Florida filed with the Interstate Commission their petition seeking to have the proceeding reopened for further hearing and consideration, and to have the order of the Commission of July 5, 1932, annulled and set aside. On the same date, the plaintiffs herein filed their petition with the Commission, praying that the proceeding be reopened for further hearing and consideration, and that the order of the Commission of July 5, 1932, be set aside or that the effective date thereof be postponed, and for further relief. Said petitions were considered by the Interstate Commission and denied on February 13, 1933.

2

The record in this proceeding in this court, including the plaintiffs' supplemental pleadings shows that the action of the Interstate Commerce Commission was based on ample, relevant and controlling testimony; and that the Cummer scale of rates have been determined to be and are, unjust, unreasonable and confiscatory. These proceedings are, in effect, efforts to require the Atlantic Coast Line Railroad Company to continue in operation rates which are unjust, unreasonable and confiscatory.

[fol. 473] 3

This respondent respectfully prays that the motion to file said supplemental bill be denied, and if the same be

allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932, as amended July 28, 1932, be allowed to go into effect on February 25, 1933, as ordered by the Interstate Commission.

Respectfully submitted, Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 474] [File endorsement omitted]

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[fol. 475] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the District Court in and for the Northern District of Georgia, Atlanta Division:

Now comes Atlantic Coast Line Railroad Company, one of the defendants named in the above stated cause, and without waiving its motion that the Court deny the motion of the State of Florida and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass, as and constituting The Florida Railroad Commission, to file said supplemental bill and its motion to dismiss said supplemental bill, if the same should be allowed, answers the same and for answer says:

[fol. 476] 1

Respondent admits that orators filed their original bill in this cause on September 9, 1932 against the United States of America and the Interstate Commerce Commission, seeking to set aside and annul the order of the Interstate Commerce Commission, entered on July 5, 1932, amended on the 28th day of July, 1932 in its Docket No. 18364, wherein the Commission fixed rates for intrastate

transportation of certain classes of logs over the Atlantic Coast Line Railroad Company, intrastate in the State of Florida for distances of 170 miles or less; that the said cause came on for hearing before this court on September 14, 1932, and was taken under consideration by this court and briefs were filed thereon by Atlantic Coast Line Railroad Company, the United States of America, the Interstate Commerce Commission, and by the complainants.

2

This respondent alleges that the complainants filed with the Interstate Commerce Commission a motion to reopen the proceeding pending before it in its Docket No. 18364, and especially its order of July 5, 1932; and to grant a rehearing; and that in said motion a great many tariffs of reduced rates on carload lots, were set up by the said complainants. The said tariffs of reduced rates included if not [fol. 477] all, practically all, of the railroads mentioned in paragraph 2 of this supplemental bill, and all, or practically all of the territory referred to therein. Said petition for re-opening and for further hearing by the complainants was granted on the 21st day of October, 1932, and the cause was assigned for hearing on the 10th day of November, 1932. Said further hearing was for the

"sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of the defendant."

In the meantime the Commission's order of July 5th, 1932, as amended as of July 28, 1932, was suspended until the further order of the Commission. The said order of the Commission entered on the 21st day of October, 1932 was entered upon petitions of Wilson Cypress Company and Wilson Lumber Company of Florida, as well as on the petition of the complainants herein; and F. S. Buffum Company, Inc. was permitted to intervene and be treated as a part to the proceeding, and it did intervene and did act as a party to said proceeding.

(a) The rates referred to in the supplemental bill as the "newly reduced rates" are expressed in carload lots; that is, they are applicable to carloads regardless of weight, size or capacity of the cars. A car of 60,000 pounds capacity [fol. 478] and loaded to that capacity brings the same revenue and only the same revenue as a car of 120,000 pounds capacity and loaded to its capacity. The Interstate Commerce Commission has never, so far as this respondent is informed and believes, approved any of the above mentioned tariffs, but said tariffs were filed, and no objections were made thereto, and they went into effect without suspension. The method of so stating rates in carload lots is condemned by the Interstate Commerce Commission and by the Supreme Court of Florida; and such method of rate-stating and application work unjust discrimination not only against interstate commerce, but as well, as between shippers and commodities.

All or practically all of the tariffs refer-ed to by the complainants in this supplemental bill are subject to conditions and limitations beyond those set out in their supplemental bill. Said supplemental bill does not completely set out the rates which are referred to therein or the tariffs therein mentioned. Respondent avers that practically all of those tariffs carry transit rates; that all, or some of them, are limited in duration; that all of them are emergency or experimental rates and were made under special circumstances. The rates show clearly that all of said tariffs apply to logs only for "dressing, stacking, creosoting, or further manufacture and re-shipment". They do not apply to the general hauling of logs. They are limited in dis- [fol. 479] tances. With rare exceptions they apply to a limited number of stations on the respective lines. They do not supplant local rates.

The usual method of applying the so-called transit rates under those tariffs is as follows:

(1) A shipper desires to ship logs from point X on the line of the carrier which has issued this transit rate, to point Y on the lines of the same carrier. At point Y the logs are to be manufactured into lumber or into the various kinds of products into which logs may be manufactured.

(2) The shipper pays the carrier the local (not the transit rate) rate from point of origin (X) to transit point (y) and preserves the waybills showing payments, weights, dates, etc.

(3) After the logs have been manufactured into one of the many products into which they may be manufactured, the shipper ships the manufactured product to the point of destination of this latter product, shipping the same over the lines of the carrier over which the logs moved.

(4) The carrier bills the shipper on the outbound manufactured material from the transit point (Y) to point of destination, at the rate shown in the filed tariffs. The shipper pays that rate and then the carrier accepts a claim against it in favor of the shipper for the difference between the local rate paid by the shipper and the net transit rate on the rough material which moved from X to Y.

[fol. 480] (5) The manufactured product which is shipped out from the transit point must bear a percentage of relation in weight to the weight of the rough material. To illustrate:

If logs have been manufactured into lumber, the manufactured product must be 33⅓% of the weight of the logs. If it has been manufactured into kegs, their weight must be 21% of the weight of the logs. If it is manufactured into headings for slack barrels the weight of the manufactured product must be 20% of the weight of the logs. If the logs are manufactured into flooring, chemically treated, the weight of the manufactured product shipped out must be 18% of the weight of the logs. The tariffs make a great many more gradations.

(6) Some of the tariffs filed by certain of the railroads authorize the shipper to enter into a contract to perform the obligations imposed upon him by the application of the tariffs covering the transit arrangement. Such tariffs require that the shipper shall give bond conditioned upon the performance by the shipper of the obligations of those tariffs. After such contract has been entered into and bond given, the carrier allows the shipper to make preliminary settlement on the basis of the transit rates on the rough material rather than on the local rates, subject to the performance by the shipper of the obligations imposed upon him by the tariffs prescribing the transit rates.

[fol. 481] (b) Referring to each of the tariffs set out as Schedules 1, 2 and 3, in paragraph 3 of the plaintiffs' supplemental bill of complaint, respondent alleges:

At the hearing on November 21-22, 1932, all of the tariffs mentioned in paragraph 3 of said supplemental bill except, as respondent believes, tariff I. C. C. A-9212 issued by the Missouri-Pacific Railroad and tariff I. C. C. A-659, supplement No. 115 "Glenn for a/c T. A. & G. Ry.", were introduced in evidence and witnesses were examined in reference thereto. Other tariffs in addition to those listed in said supplemental bill were also offered and received in evidence. The Commission considered all of said tariffs, not only in the limited manner in which they were pleaded, but in their completeness; that is, the Commission considered each and every term and condition thereof, and also the circumstances in connection therewith and the conditions which occasioned the filing of same. There was no limitation upon the evidence offered for the purpose of showing the change in the rates on logs since the close of the previous hearing before the Commission nor as to the circumstances connected therewith and the conditions which occasioned such changes; nor as to whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates over the Atlantic Coast Line.

[fol. 482] (c) Referring to the schedule of rates marked "Schedule 4" as set out in paragraph 3 of plaintiffs' supplemental bill of complaint, respondent avers:

(1) Plaintiffs refer to rates of the Louisville & Nashville Railroad under tariff I. C. C. No. 16022, supplement 19. The rates provided for in said tariff apply only to raw materials shipped from point of origin to the manufacturing point, when the products manufactured therefrom move out over the lines of the Louisville & Nashville Railroad in the proportions set out in said tariff. Said tariff is applicable for distances not in excess of 100 miles. It does not apply to all points on the L. & N.'s system. It does not displace local rates. This tariff was put into effect in circumstances and conditions exactly similar to those considered by the Commission in the reopened hearing had on November 21-22, 1932. The rates provided for in said tariff expire August 6, 1933, unless sooner cancelled, changed or extended.

(2) Plaintiffs refer to certain rates of the Atlantic Coast Line Railroad Company provided for in its tariff I. C. C. No. B-2745) and in rule 127 thereof. The tariff referred to is A. C. L. R. R.'s Lumber Transit Tariff No. 12, which cancels A. C. L. R. R.'s Lumber Transit Tariff No. 11, I. C. C. No. B-2639, and the scale of rates referred to in Rule [fol. 483] 127 was originally published in Supplement No. 23 to A. C. L. R. R. I. C. C. tariff No. B-2639, effective September 8, 1932, which was prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates provided for by this tariff do not apply to logs. They are transit rates applicable to certain forest products, other than logs, which move to Montgomery over the A. C. L.'s lines for creosoting and other treatment and which products, after such treatment, move to market from Montgomery in a back haul over the lines of the A. C. L. The statement of the rates shown by said tariff as made by the plaintiffs in the supplemental bill is incorrect. The Atlantic Coast Line charges, in addition to the net transit rates therein quote, 2½ cents per 100 pounds upon the shipments covered thereby.

(3) Plaintiffs refer to Supplement No. 1 of the above mentioned tariff I. C. C. No. B-2745) published by Atlantic Coast Line, effective Dec. 10, 1932, fixing rates on certain products. Atlantic Coast Line states that said tariff does not apply to logs. The said tariff was put into effect on August 29, 1932, which was before the date of the rehearing before the Interstate Commission, and Supplement No. 1 only added some additional stations thereto. The said Supplement No. 1 specifically designates the rates as "extra charges for back or out-of-route hauls, which are in addition to through rates and stoppage charges."

[fol. 484] The rates as stated in plaintiffs' supplemental bill are not the rates which are assessed on the original inbound movements but represent the net transit rates to which are added the transit charge of 2½ cents per 100 pounds.

(4) Plaintiffs refer to certain rates of the Central of Georgia Railway in its tariff I. C. C. No. 2851, effective September 27, 1932, to Augusta and Waynesboro, Ga. The rates referred to in said tariff are applicable only when the raw material shipped in over the Central of Georgia's lines

has been manufactured and the manufactured product is shipped out over the same lines in the proportions set out in the tariff. The circumstances and conditions under which this tariff went into effect were the same as those considered by the Interstate Commission in its reopened hearing had on November 21-22, 1932.

(5) Plaintiffs refer to rates of the Norfolk & Southern Railroad under its tariff I. C. C. No. A-760. This tariff provides for transit rates and does not apply to logs.

(6) Plaintiffs refer to rates by the Georgia and Florida Railroad Company under its tariff I. C. C. No. 558, effective May 6, 1931. This tariff was in effect long before the petitions before the Commission for reopening were filed. This [fol. 485] tariff applies only to logs which are shipped over the Georgia and Florida's lines to the transit point and the products manufactured therefrom are reshipped over the same lines in the proportions described in the tariff. These rates do not apply to all stations and do not supplant local rates. The rates under this tariff are on a parity with the rates which have been adjudged by this court, in the cases claiming restitution from Atlantic Coast Line Railroad Company, to be unjust, unreasonable and confiscatory.

(7) Plaintiffs refer to rates of the Savannah & Atlantic Railway under its tariff I. C. C. No. 115, effective July 14, 1930. This tariff was in effect long prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates stated in this tariff apply only when the products manufactured from the inbound logs are reshipped via the Savannah & Atlanta Railway's lines in accordance with the terms of the tariff, and apply only to three stations and are limited to distances of 75 miles.

(8) Plaintiffs refer to rates of the Seaboard Air Line Railway in its tariff I. C. C. No. 7528, supplement 8. This tariff covers rates from stations between Branchville, Va. and Littleton, North Carolina (including these two stations), and between Severn, N. C. and Lewiston, N. C. (including these two places) to Boykins, Virginia. The rates [fol. 486] under this tariff expire June 30, 1933, unless sooner cancelled, changed or extended. The maximum distance to which the rates under this tariff apply is 44.7 miles;

and they apply to one destination from a limited number of stations.

Plaintiffs also refer to rates under this same tariff, supplement 9. The rates prescribed by this tariff apply from one point of origin to one destination—Fitz Siding, N. C. to Norfolk, Va., 61 miles.

(9) Plaintiffs refer to Southern Railway rates under its tariff I. C. C. No. 10425, supplement 7. The rates under this tariff expire December 3, 1933, unless sooner cancelled, changed or extended. They apply to logs, etc., from Southern Railway stations to Knoxville, Tenn., from C. N. — & T. P. stations to Dayton, Tenn. and from Southern Railway stations to Fayette, Tenn. The rates under this tariff were published to meet truck competition.

All of the above mentioned tariffs and rates which are referred to in plaintiffs' supplemental bill in paragraph 3, under "Schedule 4" and which are in addition to those which were specifically set up in the reopened hearing before the Interstate Commerce Commission on November 21-22, 1932, were issued under the same kind of circumstances and conditions as were those submitted at said reopened hearing. The rates fixed in those tariffs, if applied [fol. 487] to the Florida territory over the lines of the Atlantic Coast Line Railroad Company, would be unjust, unreasonable and confiscatory. All or nearly all of them are transit rates applicable to limited distances. They do not supplant the local rates and apply between limited stations.

4

The answer to paragraph 3 is answer to paragraph 4 of said supplemental bill of complaint.

5

The supplemental bill referred to in paragraph 5 of this supplemental bill now under consideration, did not come on for hearing for the reason that the Interstate Commerce Commission entered its order of October 21, 1932, hereinbefore referred to, as is set out in paragraph 6 of this supplemental bill.

6

The reopened hearing provided for by said order of the Interstate Commerce Commission in its Docket No. 18364,

which was entered on the 21st day of October, 1932, was set for hearing on November 10, 1932, at ten o'clock A. M. at the Hotel Mayflower, Jacksonville, Florida. The time for said rehearing was changed to November 21, 1932. On said date the said reopened hearing was had at the time and place aforesaid.

[fol. 488] It was presided over by E. J. Hoy, Esq., Examiner. The complainants in this proceeding were represented by counsel at said rehearing, and introduced oral and written testimony; examined and cross-examined witnesses and also introduced a large number of exhibits. There were sixteen witnesses examined. Appearances were entered for The Florida Railroad Commission, the State of Florida, Wilson Cypress Company, Wilson Lumber Company of Florida, F. S. Buffum Co. Inc., Southern Cypress Manufacturing Association, Jacksonville Traffic Bureau and the Atlantic Coast Line Railroad Company. The hearing continued until six thirty o'clock P. M. on November 22nd. The oral testimony delivered at that hearing, as officially reported, covered 354 pages, besides the exhibits. Arguments were had on behalf of all the parties and as officially reported cover about 50 pages.

The Commission considered all of the evidence, oral and documentary and all of the arguments; and on January 9, 1933 filed its report on the further hearing, and entered its order thereon in which it ordered "that the order heretofore entered in this proceeding on October 21, 1932, suspending the operation of the order of July 5, 1932 as amended by order of July 28, 1932, until the further order of the Commission, be, and is hereby, vacated and set aside as of February 11, 1933. Thereafter the aforesaid order [fol. 489] of July 5, 1932 as amended by order of July 28, 1932 shall remain in full force and effect until the further order of the Commission."

The last mentioned order was amended by the Commission on January 19, 1933, so as to set aside the order entered on October 21, 1932 as of February 25, 1933, and to provide that thereafter the order previously "entered in this proceeding on July 5, 1932 as amended by order of July 28, 1932, remain in full force and effect until the further order of the Commission."

6a

As hereinbefore alleged, at said reopened hearing, the Commission considered all the tariffs mentioned in said supplemental bill of complaint as set out in paragraph 3, schedules 1, 2 and 3, with the two exceptions hereinbefore noted.

6b

The Commission, through Mr. Commissioner Meyer filed its report on said reopened hearing on January 9, 1933. Copy of that report is attached to said supplemental bill and reference is made to it.

It is shown in said report that the tariffs under consideration are rarely ever system-wide. They apply to limited parts of the lines as well as to limited distances; and that the rates on the lines issuing those tariffs are "not uni- [fol. 490] form.".

"The per car rates of the Illinois-Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus, & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products," etc.

The rates under those tariffs do not supplant the local log rates of those lines prior to the issue of the special rates under those tariffs. The Commission found that those rates were established

"primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. * * * Carrier competition also had a considerable influence in the establishment of these rates."

[fol. 491] The Commission also found that:

"It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product; and that while these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

The Commission, in its report of January 9, 1933, further analyzed these rates as follows:

"Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All, except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also to points to which they are applicable if the tariff provisions referred to above are not complied with.

[fol. 492] "The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York and Chattanooga are local rates and their application is

not dependent upon the outbound movement of the manufactured products over their lines."

The Commission made an extensive analysis of the evidence and of the effect which the evidence showed these rates had produced upon the transportation of logs and also upon the truck competition in Florida.

The Commission also found that the freight traffic manager for the Atlantic Coast Line Railroad Company testified:

"That there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks;"

and that it

"could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad stations represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars."

From July 1, 1930 to July 31, 1931 the decrease in the log traffic over the Atlantic Coast Line was 792 carloads, or 24.4 per cent, as found by the Commission. The Commission also found that:

[fol. 493] "The decrease in defendant's Florida lumber traffic during the same period was even greater. From July 1, 1930 to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles, and lath originating in Florida, whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all Class I carriers in the southern region, and over all class I carriers in the United States. For example from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following 9

months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all class I carriers in the southern region and by all class I carriers in the United States were 27, 28 and 30 respectively."

6c

The Commission reviewed the contention of the complainants in this cause and of the other shippers who are referred to in the Commission's report as "the Florida intervenors", to the effect that transportation conditions are substantially similar throughout southern territory. The Commission then found:

[fol. 494] "Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. We referred to Southern Class Rate case in which we prescribed class rates for that part of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida than were prescribed in the Class Rate case. In Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286, the rates prescribed for the hauls in Florida were approximately 40 per cent higher than for the remainder of southern territory."

[fol. 495] The Commission also found that:

"Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances."

No condition mentioned in any of the territory referred to and no rates prescribed by any of the tariffs referred to were left unconsidered by the Interstate Commission. The findings of the Commission in its reopened hearing, as in the preceding hearings, were, and are, amply supported by evidence, which not only justified, but required the conclusions made by the Commission in its order and report of January 9, 1933.

All of the findings of fact made by the Commission in its said report, and herein set out, are alleged by this respondent to be true and correct as therein stated, and are by this respondent pleaded as facts.

7

The answer to paragraph 7 is the answer to paragraph 8 of plaintiffs' supplemental bill of complaint.

8

Respondent admits that on February 8, 1933, after said petition of F. S. Buffum Company, Inc. had been denied by the Commission, the plaintiffs in this cause filed their [fol. 496] petition with the Interstate Commerce Commission for further hearing and reconsideration of said cause before said Commission. At the same time Wilson Cypress Company and Wilson Lumber Company of Florida filed their petition with the Commission in which they set up certain additional tariffs, then and now called "newly reduced rates". The tariffs referred to in paragraph 9 of this supplemental bill of complaint have been hereinbefore

referred to. All of said tariffs and other allegations of said petitions were considered by the Commission and were by it denied.

9

Answering paragraph 10 of said supplemental bill, respondent admits that no final judgment or decree of this court has been entered in the original suit in this cause.

10

(a) Answering the allegations of paragraph 11 of plaintiffs' supplemental bill Atlantic Coast Line Railroad Company alleges that the aforementioned "newly reduced rates" are not in effect in southern and southwestern territories throughout the country. Only rarely do they apply throughout any one system. They are limited in application to stations and to distances. They do not supersede the local tariffs. They do not apply in any part of the [fol. 497] State of Florida south of the line made by the Louisville & Nashville Railroad Company's line and the Seaboard Air Line Railway Company's line from Pensacola to Jacksonville. None of them applies in that territory of the State of Florida which has been hereinbefore described and which is referred to in the report of January 9, 1933, of the Commission as being sharply differentiated from the other southern territory and which differentiation has been made by the Interstate Commission in this particular case, on the rehearings in this case, and as well, in the Class Rate case and in Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286; all of which is more fully set out in the report of the Commission in its Docket No. 18364, and hereinbefore quoted.

This differentiation is noted not only by the Commission in its report on the reopened hearing, but as well in its report of July 5, 1932 (146 I. C. C. 717).

The said rates are all experimental and are made for the purpose of meeting truck competition and in some instances not only truck competition but rail as well. The application of said rates has not produced satisfactory results to the carriers who have put them into effect.

[fol. 498] While the Atlantic Coast Line Railroad Company owns a majority vote of the shares of capital stock

of the Louisville & Nashville Railroad Company, it has never exercised and does not now exercise any control over its traffic policies. This has been made known to the Interstate Commission in other cases as well as in this one.

Respondent is not advised as to whether or not any of the so-called "newly reduced rates" apply over the Central of Georgia Railway in Florida, but it avers that the Central of Georgia has all but no mileage in the State of Florida. It simply has the stub end of a line which runs two (2) miles south of the Alabama-Florida line.

None of the rates which are referred to as the "newly reduced rates" are applicable in Florida below the line which divides the State for rate-making purposes and in the southern part of which the higher rates apply, as has been hereinbefore pointed out.

(b) The report of the Interstate Commerce Commission on the second reopened hearing, which report is dated January 9, 1933, fairly and fully states the tariffs, their limitations and conditions.

[fol. 499] (c) The rates which are called the "newly reduced rates" have not been authorized by the Interstate Commerce Commission. Tariffs were filed evidencing those rates. No complaints were lodged against them. The Interstate Commission's jurisdiction to fix minimum rates is limited, and those rates became effective without action by the Commission.

This court has previously held, in the cases claiming restitution against Atlantic Coast Line Railroad Company, that the Cummer scale of rates is unjust, unreasonable and confiscatory. The "newly reduced rates" are made upon a basis which is likewise unreasonable, unjust and confiscatory as to those roads upon which they may be imposed. They are also made upon a carload basis without regard to weight, which lends itself to discrimination and to inexactness of charges and treatment, and if said rates were imposed upon this carrier in the territory herein involved they would be all the more unjust, unreasonable and confiscatory.

(d) Without admitting the correctness of the table of rates contained in subparagraph (d) of paragraph 11 of plaintiffs' supplemental bill, it is respectfully submitted that the said table shows how unjust, unfair and unreason-

able are the rates sought to be imposed upon the Atlantic Coast Line by this proceeding.

[fol. 500] (e) The allegations of subparagraph (f) of paragraph 11 of plaintiffs' supplemental bill, in so far as it alleges that the so-called "newly reduced rates" are in some instances transit rates, are admitted. In fact, practically all of said rates are transit rates. The exceptions to this are relatively small and in such exceptions little, if any, traffic moves. The Cummer scale of rates is not a scale of transit rates.

(f) Answering the allegations of subparagraph (g) of plaintiffs' supplemental bill, respondent alleges that the carriers by rail and water throughout the United States did institute proceedings before the Interstate Commerce Commission by application filed June 17, 1931, which became known as the "Fifteen Per Cent. case, 1931". The opinion of the Commission in that case was rendered on October 16, 1931. The Commission did add to the transportation charges on certain commodities. This Respondent says that the interstate rates for transporting logs between Florida and Georgia were fixed by the Interstate Commission in its Docket No. 18364 on August 2, 1928, and became effective February 8, 1929. The said interstate rates had been in effect some time prior to the making of the report in the Fifteen Per Cent. Case. The intrastate rates involved in this cause are on the level with and on the basis of the interstate rates fixed as aforesaid on August 2, 1928, and which have been in effect since February 8, 1929.

[fol. 501] (g) Answering the allegations of subparagraph (h) of paragraph 11 of plaintiffs' supplemental bill of complaint, respondent says that the tariff referred to therein as Atlantic Coast Line Railroad Company's tariff G. F. O. 256, was originally issued effective August 15, 1932. The reissue of December 5, 1932, was for the purpose of simplifying the tariff. This tariff was originally published to meet truck and rail competition at one mill—West Marion, South Carolina mill. The Atlantic Coast Line was promised by said mill the outbound movement of the manufactured products equal to the proportion applicable to the logs brought in by it. No logs moved under this tariff and it has been cancelled.

[fol. 502] (h) The allegations of subparagraph (i) of paragraph 11 of plaintiffs' supplemental bill are denied. The Interstate Commission has found in its report on the reopened proceeding, and in other causes, that the territory involved in this cause is not as favorably situated from a transportation standpoint as other territories in the southeastern part of the country.

11

Answering paragraphs 13 and 14 of plaintiffs' supplemental bill, respondent says that said paragraphs are argumentive statements of law and each conclusion therein drawn is incorrect. Respondent further says that the Interstate Commerce Commission acted on ample evidence and with full authority; that said Commission has violated no provision of the statutes or of the Constitution of the United States; and that the plaintiffs are not entitled to a trial de novo upon any of the things set up in their said supplemental bill.

Wherefore, respondent having answered the allegations of said supplemental bill, prays *said* the same be dismissed and the prayers thereof be denied; that the injunction and restraining order prayed for in said supplemental bill be refused and that this respondent have such other and further relief as may be meet and proper.

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 503] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 504] [File endorsement omitted.]

[fol. 505] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

PETITION TO INTERVENE IN THE ABOVE STATED CAUSE BY GEORGIA PUBLIC SERVICE COMMISSION—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, and respectfully represents unto this Honorable Court that it was the petitioner before the Interstate Commerce Commission in the proceeding under its Docket No. 18364, out of which the reports and orders of the Interstate Commission complained of in this proceeding originated; and prays to be allowed to intervene in this cause.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

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[fol. 506] [File endorsement omitted]

[fol. 507] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

MOTION OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO DENY THE MOTION OF PLAINTIFFS TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

Now comes Georgia Public Service Commission, intervenor, and respectfully moves this court to deny the motion of the State of Florida and the members of the Florida Railroad Commission, to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

[fol. 508] 1

The proceedings in this case show that all of the matters and things which are set out in the supplemental pleadings have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commission has found that the matters and things set out in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its Docket No. 18364.

2

The record in this proceeding in this court, including the plaintiff's supplemental pleadings shows that the action of the Interstate Commerce Commission was based on ample, relevant and controlling testimony; and that the Cummer scale of rates has been determined to be unjust, unreasonable and confiscatory.

[fol. 509] 3

This intervenor respectfully prays that the motion to file said supplemental bill be denied, and if the same be allowed, that the prayers therof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932, be allowed to go into effect on February 25, 1933 as ordered by the Interstate Commission.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fol. 510] [File endorsement omitted]

[fol. 511] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor in the above stated cause, and without waiving its motion that the Court deny the motion of the State of Florida, and the members of the Florida Railroad Commission to file said supplemental bill and its motion to dismiss said supplemental bill, if the same should be allowed, answers the same and for answer says:

1

This intervenor does not deem it necessary to answer the various allegations of said supplemental bill in detail. Intervenor states that the findings of the Interstate Commerce Commission in its report of August 2, 1928 and in [fol. 512] its report on the reopened proceedings, of July 5, 1932, and in its report and order on the second reopened hearing, of January 9, 1933, in this proceeding, known as its Docket No. 18364, are all based on ample and controlling evidence, much of which is wholly uncontradicted.

2

The findings of the Interstate Commission in said hearings represent the legislative action of the Commission on facts submitted to it after due notice to all parties concerned and in which all of the parties were permitted to offer evidence, to file briefs and to make arguments. All of the matters were considered with painstaking care over a long period of time. The Interstate Commission's findings on those facts are conclusive.

The Interstate Commission in its first report in this cause, of August 2, 1928, established not only certain intrastate rates on logs for application in Florida, but also interstate rates for the transportation of the same kind of logs between points in Florida and Georgia. Those intrastate rates have since been reaffirmed by the Interstate Commission, and there has been no contest over the interstate rates.

This intervenor avers that there is, in its judgment, no reason why the intrastate rates involved in this proceeding, on logs over six feet in length, in Florida, should differ from interstate rates on the same kind of logs moving from points in Florida to points in Georgia; and that as hereinbefore stated, the said interstate rates have not been contested.

[fols. 513 & 514]

3

Intervenor represents that this situation — been an unsettled one for now about eight years and has caused this intervenor to suspend on the 25th day of May, 1925 a schedule of intrastate rates in Georgia which it had issued on April 15, 1925. That schedule of rates was comparable to and almost in exact conformity with the interstate rates put into effect by the Interstate Commission in this proceeding, applicable to the transportation of certain kinds of logs between points in Florida and points in Georgia.

4

This intervenor prays that the injunction prayed for in said supplemental bill be denied and that the orders of the Interstate Commerce Commission be allowed to become effective February 25, 1933.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fol. 515] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 691

WILSON CYPRESS COMPANY, WILSON LUMBER COMPANY OF FLORIDA, Petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Sept. 9, 1932

To the Honorable the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

Petitioners, Wilson Cypress Company and Wilson Lumber Company of Florida, respectfully represent:

I

Petitioners are each corporations having their principal offices respectively in Palatka and Perry, Florida, and each is extensively engaged in the business of manufacturing and selling lumber, with mills located on the line of the Atlantic Coast Line Railroad Company within the State of Florida.

II

Petitioners bring this suit in equity against the United States of America under an act of Congress approved October 22, 1931, known as the "District Court Jurisdiction [fol. 516] Act," (38 Stat. 1. 219), to enjoin, set aside and annul a certain order entered by the Interstate Commerce Commission, hereinafter called "The Commission," an administrative tribunal created by Act of Congress of February 4, 1887, and whose duties and powers are defined in such act and amendments thereto and supplements thereof, said order being dated July 5, 1932, in a proceeding known as Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, and instituted by the Georgia Service Commission, a public tribunal of the

State of Georgia, created by the laws of Georgia and having its legal residence in and being a resident of the Northern District of Georgia.

III

The Atlantic Coast Line Railroad Company owns and operates various lines of railway in the States of Georgia and Florida. For the transportation of such logs wholly within the State of Florida, as aforesaid, the Atlantic Coast Line Railroad Company voluntarily established in the year 1914 and thereafter voluntarily continued in effect and now charges a certain mileage scale of rates, known as the "Cummer Scale," which, for varying distances up to 170 miles, provides varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way."

IV

In its complaint filed with the Commission on May 3, 1926, the Georgia Public Service Commission alleges that the rates on logs, in carloads, from points in Florida to destinations in Georgia, were unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act, and, as compared with rates on logs within the State of Florida, were unjustly discriminatory and unduly prejudicial, causing undue and unreasonable advantage, preference and prejudice as between Florida shippers in intrastate commerce, on the one hand, and Georgia shippers in interstate commerce, on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce, in violation of the provisions of Sections 3 and [fol. 517] 13 of the Interstate Commerce Act.

V

Thereupon such complaint was served by the Interstate Commerce Commission upon the Atlantic Coast Line Railroad, which thereafter, and in due course, filed with the Interstate Commerce Commission its answer thereto and in such answer the railroad denied that there was or had been any violation on its part of the Interstate Commerce Act, and demanded that "it be hence dismissed".

The Interstate Commerce Commission, also, in compliance with Section 13, (3) of the Interstate Commerce Act,

notified the State of Florida and the Florida Railroad Commission of the proceedings, and that Commission upon the subsequent hearing appeared in defense of the Florida intrastate rates.

VI

Thereafter a number of petitions of intervention were permitted, including the petitions by each of the petitioners herein, except the Wilson Lumber Company of Florida, which was later permitted to intervene, as hereinafter appears, and hearings were had before an Examiner of the Commission at which evidence was presented.

In the course of said proceeding the complainant, Georgia Public Service Commission, averred that the end sought to be achieved under the complaint was an extension of the then effective intrastate Florida log rate (Cummer Scale) interstate into Georgia and took the position of record that the proceeding was "not a revenue case". In the production of its evidence the defendant, Atlantic Coast Line Railroad, disclaimed any contention that the then effective intrastate Florida log rate (Cummer Scale) was not compensatory and stated as its position of record that it had not made and was not making any proposal to revise those intrastate rates.

Thereafter the report of said Examiner was filed and the case was heard on brief and argument.

That thereafter on, to-wit, August 2, 1928, Division 4 of said Interstate Commerce Commission rendered its re-
[fol. 518] port and order in said proceeding.

That in and by such report and order it was found and concluded by said Division 4 of said Interstate Commerce Commission that the interstate rate on logs published by the Atlantic Coast Line Railroad Company of Georgia destinations on its line from Florida origins on its lines north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs for distances not exceeding 170 miles were, and would be, unjust and unreasonable to the extent that they exceeded, or might exceed, a distance scale of rates therein prescribed, which rates said Division 4 found were and would be reasonable; and which rates said Atlantic Coast Line Railroad Company was required to establish on or before October 10, 1928.

That in and by such report the Florida intrastate rates (Cummer Scale) were found to result "in undue prefer-

ence and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce", and in and by said order said Atlantic Coast Line Railroad Company was required to establish carload rates for logs (except walnut, cherry and cedar) in intrastate commerce "within the State of Florida" which should be the same as the rates prescribed by the Interstate Commerce Commission as reasonable for transportation in interstate commerce from points in the northern portion of Florida to destinations in Georgia.

VII

The order of the Commission entered as aforesaid, was, by its terms, effective on or before the 10th day of October, but by subsequent orders the effective date of said order was extended to February 9, 1929. Numerous parties, including these plaintiffs, filed petitions for a reopening of said case as to rates between points in Florida and for further argument and consideration, and filed briefs in support of said petitions, but the Commission, by an order [fol. 519] entered on the 1st day of November, 1928, overruled and denied all of said petitions.

VIII

On November 24, 1928, the Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company filed their bill of complaint against the United States of America and the Interstate Commerce Commission in the United States District Court for the Northern District of Georgia, Atlanta Division, In Equity, being Case No. 511, and styled Brooks-Scanlon Corporation, et al., plaintiff, v. United States of America and Interstate Commerce Commission, defendants, wherein said petitioners, having exhausted their administrative remedies, sought to annul, vacate and set aside said report and order of the Interstate Commerce Commission and to enjoin the enforcement thereof insofar as such report and order in any way dealt with the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company, therein involved, and affecting the shipments of logs under such rates to said pe-

titioners from the points of shipment in Florida to their lumber mills in Florida, on the ground that said report and order were arbitrary, unreasonable, invalid and unlawful, and would cause irreparable injury and damage to the petitioners and constituted an unlawful invasion of the sovereign rights of the State of Florida, reserved to it under the Constitution of the United States and of the citizens of the State of Florida, and that the Commission was without jurisdiction to enter the same.

IX

On November 26, 1928, petitioner, Wilson Lumber Company of Florida, filed its bill of complaint against the United States of America in this court, In Equity, being case No. 512, styled Wilson Lumber Company of Florida, plaintiff, v. United States of America, defendant, wherein said petitioner alleged that the Commission's order aforesaid was null and void and that it had no adequate remedy at law and therefore prayed for a temporary injunction restraining the Interstate Commerce Commission and the [fol. 520] United States of America from enforcing the terms of the order aforesaid, requiring the Atlantic Coast Line Railroad to increase its rates on logs between points in the State of Florida and asking that upon final hearing of said case a decree be entered adjudging said order to be in all respects null and void, and ordering same to be abrogated, cancelled and set aside and permanently enjoining the Interstate Commerce Commission and the United States from taking any steps to enforce said order.

X

On November 27, 1928, the State of Florida and A. S. Wells, E. S. Mathews and Mamie G. Eaton, as constituting the Florida Railroad Commission, filed a bill of complaint in this court, being case No. 514, In Equity, against the United States of America and the Interstate Commerce Commission, styled State of Florida, et al. v. United States, et al., wherein said petitioners alleged that said report and order of the Commission in respect to Florida intrastate rates of the Atlantic Coast Line Railroad on logs were arbitrary and unreasonable and beyond the power of the Interstate Commerce Commission, and wholly invalid and

unlawful, for various reasons set forth in said bill of complaint, and instituted said proceeding for the purpose of annulling, vacating and setting aside such report and order of the Commission and to enjoin the enforcement thereof insofar as such report and order required the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs (except walnut, cherry and cedar), in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which should be the same as those prescribed by the Commission as reasonable for the transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia, for the reason that said report and order of the Commission was invalid and unlawful because, under the facts of record in such proceedings before the Commission, there was no constitutional right or warrant for the exercise or attempt by the Commission to exercise any Federal power in derogation of or superior to the right and power of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order, and because there was no substantial [fol. 521] evidence before the Commission showing or attempting to show that there was any undue or unjust preference or advantage of Florida shippers or communities, or any undue or unjust prejudice or disadvantage to Georgia shippers in violation of Sections 3 and 13 of the Interstate Commerce Act, or any facts sufficient to constitute unjust discrimination against interstate commerce in violation of the provisions of Section 13 of said Act, and that the action of said Commission constituted an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of the State of Florida, and that said Commission was without jurisdiction to enter said order.

XI

The said three suits were consolidated and heard before a court of three judges as required by the applicable statute.

This Court in its opinion, construed the order of the Interstate Commerce Commission insofar as it was applicable to intrastate rates in Florida as being limited to points of origin on the Atlantic Coast Line Railroad in the northern

part of Florida, as the Interstate Commerce Commission had confined its order to those points or origin in fixing interstate rates, and this court, in the course of its opinion, stated that a construction that the order complained of fixed intrastate rates for the whole of Florida "would probably nullify the order". Thereupon this Court sustained said order upon this narrower construction and decrees were entered on, to-wit, January 17, 1929, in said three suits dismissing the bills.

Thereafter on, to-wit, February 7, 1929, effective February 8, 1929, said Interstate Commerce Commission, without notice to your petitioners and without any investigation or proceeding whatsoever, amended its order with respect to intrastate rates, "for the purpose of clarification" by substituting for the phrase "within the State of Florida" the words, "Within and throughout the entire State of Florida, without exception".

Petitions for rehearing and for leave to file supplemental bills in said three suits were then presented to this Court and were granted and said supplemental bills were filed. [fol. 522] Answers were filed by the United States of America to said supplemental bills of complaint and Atlantic Coast Line Railroad Company was permitted to intervene and file its answer to said supplemental bills.

On the 17th day of April, 1929, after the rehearing, orders were entered dismissing both the original and supplemental bills of complaint and denying the relief prayed in each of said three suits.

This Court upheld the amended order of the Interstate Commerce Commission solely upon the ground that the order was aimed at a discrimination "against *general* interstate commerce", caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carriers.

The aforesaid suits, including the pleadings, evidence, orders and decrees therein, appear of record in this Court and reference thereto is hereby prayed and the same is in its entirety made a part hereof by reference as though the same were set forth herein in haec verba.

## XII

Thereafter said three cases were duly appealed to the Supreme Court of the United States and an opinion ren-

dered therein by said Supreme Court of the United States on, to-wit, the 5th day of January, A. D. 1931, wherein said Supreme Court concluded that the portion of the order of the Interstate Commerce Commission with respect to intrastate rates (being the portion of said order under review in said three suits) was not supported by the findings of the Interstate Commerce Commission, and that that part of the order must be set aside. That the decrees of this Court were accordingly reversed.

XIII

That thereafter the mandates of the Supreme Court of the United States reversing the decrees of this Court having been produced in each of said cases, this Honorable Court on, to-wit, March 7, 1931, entered in each of said three suits its order adjudging that all parts of the said order of the Interstate Commerce Commission which prescribed or attempted to prescribe rates for the transportation of logs in intrastate commerce in the State of Florida on the lines of the Atlantic Coast Line Railroad Company [fol. 523] were invalid and unlawful, and such parts of said order of the Interstate Commerce Commission were thereby enjoined, set aside and annulled.

XIV

At or about the time of the last mentioned order of this Court, said Georgia Public Service Commission and said Atlantic Coast Line Railroad Company filed with said Interstate Commerce Commission simultaneously motions to reopen said proceeding, viz., the proceeding described as "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, Interstate Commerce Commission Docket No. 18364."

The motion of the Georgia Public Service Commission recited the filing of its original complaint, the issuance of the order of the Interstate Commerce Commission, the attack upon that order in the courts, and the reversal of the judgment of this Court by the Supreme Court. The motion quotes that portion of the opinion of the Supreme Court which declares the basic or essential findings required to support the order of the Interstate Commerce Commission to be lacking and which declares that if the facts as to intrastate transportation of logs in Florida are

such as to justify an order as to intrastate rates, the Interstate Commerce Commission is still at liberty to make such determinations as the situations may require. The motion then requests the Interstate Commerce Commission to reopen the proceedings and to make the determinations required by the situation and to issue such report and to make such findings and orders, "as will result in removing the discriminations set out in the original petition". The motion prays that the Commission make such findings and issue such orders as it may deem requisite or necessary "to fully accomplish the purposes of the original petition and of this motion", and that the Interstate Commerce Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from all points in Florida to all destinations in Georgia and that the measure of such rates be no higher than the rates concurrently in effect for the same kind of property moving in intrastate commerce in the State of Florida.

The motion of the Atlantic Coast Line Railroad Com- [fol. 524] pany recited the filing of the original complaint by Georgia Public Service Commission before the Interstate Commerce Commission, the order entered by the Interstate Commerce Commission, and the decisions of this Court and of the Supreme Court upon the attack upon the order of the Interstate Commerce Commission, and quoted the same portion of the opinion of the Supreme Court which had been quoted in the motion of the Georgia Public Service Commission to reopen the proceedings. This motion likewise averred that the Florida Railroad Commission was undertaking to enforce the Cummer Scale and that petitions had been filed in this Court in the three suits pending in this Court above mentioned asking for an order directing restitution to be made by said Atlantic Coast Line Railroad Company to the lumber companies and shippers in the State of Florida on account of shipments of logs made after February 8, 1929, such restitution to be based upon the difference between the Cummer Scale of rates and the scale of rates prescribed by the Interstate Commerce Commission. And said motion averred that the sums whereof restitution was requested as aforesaid were in excess of $200,000.00. Said motion prayed the following relief:

"(a) * * * that this Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary.

"(b) That this Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond said 170 miles, as may be lawful.

"(c) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper."

Neither of said motions asserted in issuable form, or indeed asserted at all, that the level of the Florida intrastate rates were so low as to constitute a revenue burden either upon interstate commerce or upon the general revenues of the carrier.

Replies to said motions were filed by the State of Florida, Florida Railroad Commission and interveners, Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company. On or about April 6, 1931, the Interstate Commerce Commission, upon consideration of said motions and replies, ordered that said proceeding be [fol. 525] reopened for further hearing. By order of April, 28, 1931, the Commission permitted your petitioner, Wilson Lumber Company of Florida, to intervene and be treated as a party to said proceedings.

XV

That the complainant, Georgia Public Service Commission, offered no evidence whatever to prove any revenue burden on interstate commerce caused by the application of the Florida intrastate scale of rates (Cummer Scale) and thereupon, the Examiner having ruled that the issue of undue burden upon interstate commerce was involved in the proceeding, a motion was made by the interveners to dismiss that portion of the complaint which under such ruling was construed as alleging that said Florida intrastate scale of rates unduly burdened interstate commerce. That the Examiner ruled that he had no authority to dismiss the complaint and thereupon the defendant was per-

mitted to introduce evidence designed to prove affirmatively this allegation of the complaint made against the defendant. That said motion to dismiss was insisted upon before the Interstate Commerce Commission and denied by it in its report and order of July 5, 1932, hereinafter referred to.

That on, to-wit, May 14, 1931, and prior to the first hearing in said reopened proceeding, your petitioners and other intervening shipper defendants therein made written demand upon the Atlantic Coast Line Railroad Company that it produce at said first hearing a statement of the number of cars, total tonnage and charges applicable thereto covering the transportation of logs of the tariff description involved in said proceeding, moving in intrastate commerce in Florida during the following periods:

February 1, 1926, to January 31, 1927.
February 1, 1927, to January 31, 1928.
February 1, 1928, to January 31, 1929.
February 1, 1929, to January 31, 1930.
February 1, 1930, to January 31, 1931.

[fol. 526] That a similar statement as to such logs moving in interstate commerce from Florida to Georgia during the same periods was included within the same demand. That said written demand likewise requested a statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs of the tariff description involved in said proceedings, interstate as well as intrastate, over all or any parts of its railroad lines wherever situate during the years ending respectively January 31, 1927, January 31, 1928, January 31, 1929, January 31, 1930, January 31, 1931. That likewise in said written demand it was stated that if it was not practicable to furnish the data last mentioned except by calendar years, that then that data be furnished for the calendar years 1926, 1927, 1928, 1929 and 1930. That copy of said written demand was furnished to the Interstate Commerce Commission and the Georgia Public Service Commission.

That the information so demanded was never furnished nor was any part of it ever furnished, save and except that said Atlantic Coast Line Railroad Company furnished a statement showing the number of cars, total tonnage and charges applicable to the transportation of such logs within the State of Florida for the period beginning February 9,

1929, and ending January 31, 1931, viz., the period of the effectiveness of the order of the Interstate Commerce Commission, without said statement being divided in any way into any other periods of time and save and except that upon said demand being insisted upon in the course of the proceedings the Atlantic Coast Line Railroad Company admitted of record that there had been no interstate movement of such logs from Florida to Georgia "except possibly an occasional car load".

That the Atlantic Coast Line Railroad Company refused to furnish the information so demanded and your petitioners and other intervening shipper defendants in due course moved said Interstate Commerce Commission to require said Atlantic Coast Line Railroad Company to produce the data so demanded as aforesaid for use in said proceeding. That said Interstate Commerce Commission refused to require said Atlantic Coast Line Railroad Company to furnish said information or any of it.

[fol. 527] That in the course of said proceeding formal motion was made that said Interstate Commerce Commission require said Atlantic Coast Line Railroad Company to furnish information showing the number of cars of logs transported by it intrastate in Florida during the years 1926, 1927, and 1928, and the revenue received by it for such transportation. That said Interstate Commerce Commission by its order made on to-wit, July 7, 1931, denied said motion. A copy of said order is filed herewith, as part hereof and marked "Exhibit A". That all of said information so demanded and sought to be required and said information, save and except to the limited extent as hereinabove stated, has never been furnished or produced in said proceeding and the data and information so demanded and sought is not in evidence in said proceeding.

That there is no evidence in said proceeding anywhere showing the amount of revenue which had been derived by the Atlantic Coast Line Railroad Company from the Florida intrastate traffic in logs of the tariff description involved in said proceeding under the Florida intrastate rates, (Cummer Scale).

XVI

After said hearings and on or about December 12th, 1931, certain Examiners of the Interstate Commerce Commission to whom said proceedings had been assigned did

file, submit and serve upon all interested parties a report in which it was proposed that the Interstate Commerce Commission should find: that the interstate rates previously prescribed and then in effect were not unreasonable; that the Florida intrastate rates were not shown to be unduly prejudicial to Georgia shippers and localities engaged in interstate commerce in the State of Georgia; but that the Florida intrastate rates (Cummer Scale) were and for the future would be unjustly discriminatory against interstate commerce and that such discrimination should be removed by the establishment of a special rate from Hines, Florida, to Palatka, Florida, of not less than 5.5 cents per hundred pounds, minimum 50,000 pounds, and by the establishment of intrastate rates between all other points on the Atlantic Coast Line Railroad in Florida which should be the same as the intrastate rates previously prescribed [fol. 528] in the report and order of August 2, 1928, of the Interstate Commerce Commission.

Said report quoted from the opinion of the Supreme Court the following language which was used in striking down the former order of the Interstate Commerce Commission:

"The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

Said Examiners being apparently unable to make these basic and essential findings, and thereby tacitly admitting that the evidence did not support such findings, averred that the Supreme Court's statement as to the absence of those findings, "was made as a suggestion of what might have been appropriate findings to support the conclusion", and averred, "These suggested findings were merely illustrative; there is nothing in the opinion that would warrant the conclusion that such findings, and no other, were essential preliminary findings of fact."

The proposed report accordingly did not propose that the Interstate Commerce Commission should make those

findings, the absence of which caused the Supreme Court to condemn the former order, and the evidence is not and was never present upon which those findings could be made.

XVII

Thereafter exceptions were filed to said proposed report by your petitioners and by the State of Florida and the Florida Railroad Commission and certain other intervening shipper defendants, and in due course the proceeding came on to be orally argued on, to-wit, February 3, 1932, before the entire Interstate Commerce Commission at Washington, D. C. At such argument there appeared counsel for said Georgia Public Service Commission, for said Atlantic Coast Line Railroad Company, for your petitioners, and for the State of Florida and the Florida Railroad Commission.

[fol. 529] Thereafter on July 5, 1932, said Interstate Commerce Commission rendered its certain report and order in said proceeding, a copy of said report and order being hereto attached and marked "Exhibit B", and made by reference a part hereof.

In that report the Interstate Commerce Commission found that the interstate rates from Florida to Georgia prescribed by its former order of August 2, 1928, and thereafter continuously in effect were reasonable. The report recited that in the original hearing it had been shown that there was no actual movement of logs from Florida to Georgia, and that during the period of more than two years from February 8, 1929, to about April 10, 1931, when the interstate rates from Florida to Georgia and the Florida intrastate rates were on a parity there was no movement from Florida to Georgia, except possibly an occasional carload. The report recites that it is impossible to say whether a movement from Florida to Georgia will develop in the future and that, since the Florida intrastate rates are by the new order again being put on a parity with the interstate rates, no finding in reference to undue prejudice against persons and localities in interstate commerce was necessary and the report expressly declines to make any finding in that regard. Your petitioners aver that there has never been any evidence of the movement of even a single carload of logs from Florida to Georgia, whether the rates were on a parity or not, and no evidence upon which

it could be assumed that there will ever be such a movement. Your petitioners further aver that the interstate rates from Florida to Georgia theretofore prescribed and thereafter and now in effect were only applicable from points in Northern Florida to points in Georgia as has been hereinabove set forth.

Said report of said Interstate Commerce Commission further found that the Florida intrastate rates involved in the proceeding were, and for the future would be unjustly discriminatory against interstate commerce, and that such unjust discrimination could and should be removed by the establishment between all points on the Atlantic Coast Line Railroad in Florida for distances of 170 miles or less of rates which should be not less than the same rates previously prescribed by the order of August 2, 1928, [fol. 530] for the intrastate transportation of logs in Florida. And your petitioners aver that said finding was made, notwithstanding the fact that said Interstate Commerce Commission failed to make the findings which the Supreme Court had declared to be essential to justify the invasion of the domain of the State of Florida, and in lieu thereof had attempted to substitute for such findings doubtful, ambiguous and indefinite conjectures none of which have been made to clearly appear or to appear at all by the evidence, and notwithstanding the fact that it had not been made to clearly appear or to appear at all by the evidence that the jurisdictional findings prescribed by the Supreme Court could be made, and notwithstanding the fact that the findings which the Commission purported to make were not supported by the evidence.

That the order accompanying said report (without any effective date being fixed therefor) directed that the Atlantic Coast Line Railroad Company cease and desist from practicing the discrimination found in the report to exist in the relation of intrastate and interstate rates and to establish rates on logs in intrastate commerce "within and throughout the State of Florida" for distances of 170 miles or less which should be the same as those rates theretofore prescribed in the order of August 2, 1928, as aforesaid, for the transportation of logs in intrastate commerce in Florida and in interstate commerce from points in Northern Florida to points in Georgia.

XVIII

That thereafter on, to-wit, July 28, 1932, without notice or hearing, said Interstate Commerce Commission made its order amending its report and order of July 5, 1932, and therein ordered that the effective date thereof shall be "on or before September 15, 1932". That a copy of said order of July 28, 1932, is hereto attached and marked "Exhibit C" and made by reference a part hereof.

Thereafter your petitioners herein, on August 10th, moved the Commission for postponement of the effective date of said order to November 15, 1932, but said motion was denied by the Commission on August 13, 1932.

[fol. 531] XIX

On or about the 18th day of August, 1932, your petitioners herein filed with the Commission their petition for further hearing and reconsideration of the aforesaid proceeding, and on or about August 24, 1932, the State of Florida and the Florida Railroad Commission filed a similar petition. The Commission, on the 25th day of August, 1932, denied said petitions for further hearing and reconsideration.

XX

Wherefore, having exhausted their administrative remedies, your petitioners herein respectfully institute this proceeding for the purpose of annulling, vacating and setting aside said report and order of July 5, 1932, as amended as aforesaid, of said Interstate Commerce Commission, and to enjoin the enforcement thereof.

XXI

And your petitioners aver that said report and order, as amended as aforesaid, are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful.

XXII

Said report and order, as amended as aforesaid, are unlawful for the following several reasons, among others:

(1) Because under the facts of record in said proceeding before the Interstate Commerce Commission there was no

constitutional right or warrant for the exercise of or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by said order.

(2) Because the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission have not been made and cannot be made by the Interstate Commerce Commission upon the evidence that was before it in said proceeding.

(3) Because the basic essential and jurisdictional facts [fol. 532] necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the said report or findings of the Interstate Commerce Commission.

(4) Because the basic essential and jurisdictional facts necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the evidence before said Commission.

(5) Because the findings of fact upon which the Interstate Commerce Commission relied to justify its order prescribing intrastate rates were not warranted and/or made to clearly appear by the evidence before said Commission.

(6) Because said Interstate Commerce Commission made no finding supported by evidence of the essential facts as to the Florida intrastate traffic in logs and the revenue therefrom, and as to the effect of the intrastate rates both as existing and prescribed, upon the income of the said Atlantic Coast Line Railroad Company, which would justify the conclusion that said order was needed to avoid an undue burden on the revenues of said carrier and a consequent interference with the maintenance of an adequate transportation system.

(7) Because the Interstate Commerce Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

(8) Because it did not and does not clearly appear that the evidence warranted a finding of the amount of revenue which had been derived in the past by said Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (Cummer Scale).

(9) Because the Interstate Commerce Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission has ordered established.

(10) Because it did not and does not clearly appear that [fol. 533] the evidence warranted a finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission ordered established.

(11) Because the Interstate Commerce Commission made no finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(12) Because it did not and does not clearly appear that the evidence warranted a finding that the application of the existing intrastate rate (the Cummer scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenue and obstructed the maintenance of an adequate national transportation system.

(13) Because the Interstate Commerce Commission made no finding that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(14) Because it did not and does not clearly appear that the evidence warranted a finding that any undue burden upon the carrier's revenues and obstruction to the main-

tenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(15) Because the Interstate Commerce Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce, an additional and greater amount of income, and made no finding that such additional [fol. 534] and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(16) Because it did not and does not clearly appear that the evidence warranted a finding that the alteration of the intrastate rates would produce or was likely to produce, an additional and greater amount of income and it did not and does not clearly appear that the evidence warranted a finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(17) Because the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(18) Because it did not and does not clearly appear that the evidence warranted a finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(19) Because the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court has declared lies with the state authority and not with the Interstate Commerce Commission.

(20) Because no complaint was made and no evidence offered by the complainant of a revenue burden upon interstate commerce.

(21) Because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceeding before it any case or controversy of such character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

[fol. 535] (22) Because the same are not appropriate to the case and not just to the parties to be affected, they were not made following the forms of law, nor were they adapted to the end sought to be attained in said proceeding before said Interstate Commerce Commission.

(23) Because in making the same the Interstate Commerce Commission considered and gave effect to rate comparisons.

(24) Because in making the same the Interstate Commerce Commission considered and gave effect to statements of system revenue returns, and to the relation of log traffic and log revenue to total traffic and total revenue.

(25) Because in making the same the Interstate Commerce Commission considered and gave effect to system average costs.

(26) Because in making the same the Interstate Commerce Commission considered and gave effect to cost studies and other matters which were incompetent and insufficient to furnish the basis for any such report and order.

(27) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of out-of-pocket costs of transportation wherein there were included charges to operating expenses not authorized by the Classification of Operating Revenues and Operating Expenses of Steam Roads as prescribed by the Interstate Commerce Commission.

(28) Because in making the same the Interstate Commerce Commission considered and gave effect to its own cost study, Appendix E of said report, which was formulated from matters dehors the record, without submitting the same in evidence and without affording an opportunity

to cross-examine the author thereof and to offer evidence in rebuttal thereof and thereby deprived these petitioners of the full and fair hearing to which they are entitled by the Act.

(29) Because your petitioners were not afforded a fair opportunity to be heard respecting the justice of the same.

(30) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of transportation costs which charged to the costs of Florida intrastate log transportation the full statutory return of five and three-quarters per cent while contemporaneously [fol. 536] the return actually earned by the carrier was far less.

(31) Because the rates prescribed therein to be applicable to Florida intrastate log transportation are far in excess of all demonstrated costs, taxes, and the full statutory return of five and three-quarters per cent, and are extortionate.

(32) Because said Interstate Commerce Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have been prescribed and in which no general investigation of rate levels, whether on interstate or intrastate traffic, has been made.

(33) Because the intrastate rates prescribed in said proceeding before the Interstate Commerce Commission are broader in their scope than the interstate rates prescribed in said proceeding, and are beyond the scope of the issues raised in said proceeding.

(34) Because it did not and does not clearly appear in said proceeding before the Interstate Commerce Commission that there was or is any unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(35) Because in said proceeding the Interstate Commerce Commission did not find any facts sufficient to constitute an unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(36) Because said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sover-

eign rights of the State of Florida reserved to it by the Constitution of the United States and of these petitioners, citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further that the said Interstate Commerce Commission was and is without jurisdiction to enter its said order.

(37) Because, said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

[fol. 537] XXIII

Petitioners aver and charge that they have invested many hundreds of thousands of dollars in their mills in Florida and have arranged for the manufacture of lumber by their said mills from logs to be transported by the Atlantic Coast Line Railroad Company; that the effect of the order of the Interstate Commerce Commission is to require that the rates for transportation of such logs to said mills by the Atlantic Coast Line Railroad Company be more than doubled and that it will be impossible for petitioners to pay such rates and operate their mills except at such heavy loss that their ability to operate such mills and to continue their business will be seriously impaired, if not destroyed, and that unless the enforcement of said order is by this Honorable Court enjoined, petitioners will be irreparably injured and damaged in their business and will be deprived of their property by the enforcement of an unlawful order of the Interstate Commerce Commission, and that the damage which will be thus inflicted upon petitioners will be irrreparable and cannot be compensated for nor adequately redressed by any suit or suits at law, and petitioners have no plain, complete or adequate remedy at law available to them in the premises.

Wherefore, your petitioners respectfully pray as follows:

(a) That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and of this bill of complaint in the

manner prescribed by statute in such cases made and provided.

(b) That upon the filing of this bill the Judge of this Court call to his assistance two other judges, one of whom shall be a Circuit Judge; that this Honorable Court will examine the evidence taken before said Interstate Commerce Commission and determine for itself, independently of any determinations or findings of said Interstate Commerce Commission, whether or not such facts warranting such findings, which are pre-requisite to the jurisdiction of [fol. 538] the Interstate Commerce Commission to invade the domain of the State of Florida, have in fact been made to clearly appear by the evidence.

(c) That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and null and void and that said report and order, as amended, be set aside and annulled.

(d) That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

(e) That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commisison and permanently enjoining the enforcement thereof.

(f) That your petitioners may have such other and further relief in the premises as to the Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

J. V. Norman, Richard H. Hill, August G. Gutheim, Chas. E. Cotterill, H. P. Adair, C. G. Ashby, Attorneys for Petitioners.

[fol. 539] *Duly sworn to by J. V. Norman. Jurat omitted in printing.*

[fol. 540] EXHIBIT "A" TO COMPLAINT

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 7th Day of July, A. D. 1931

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Order

Upon consideration of motion of intervener Wilson Lumber Company made during the progress of the further hearing had on June 10, 11, and 12, 1931, that defendant be required to furnish information showing the number of cars of logs transported by it intrastate in Florida during the years 1926, 1927, and 1928, and the revenue received by it for such transportation:

It is ordered, That said motion be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

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[fols. 541-601] EXHIBIT "B"

Report of the Commission on further hearing omitted, printed side page 39 ante.

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[fol. 602] Exhibit "C" omitted, printed side page 100, ante.

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[fol. 603] [File endorsement omitted.]

[fol. 604] IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Sept. 14, 1932

To the Honorable the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

1

Petitioner is a common carrier by railroad, operating in the States of Florida, Georgia, Alabama, North Carolina, South Carolina and Virginia.

2

The subject matter of this litigation concerns rates for services to be performed by it and it is interested in the issues of this case.

Wherefore, Atlantic Coast Line Railroad Company prays that it be allowed to intervene in this cause.

Respectfully submitted, Carl H. Davis, W. F. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Company.

[fol. 605] The foregoing petition of Atlantic Coast Line Railroad Company to intervene in the above stated cause is granted.

This 14 day of September, 1932.

Sam. H. Sibley, United States Circuit Judge. E. Marvin Underwood, U. S. District Judge. Louie W. Strum, U. S. District Judge.

[fol. 606] [File endorsement omitted.]

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[fol. 607] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS AND ANSWER—Filed Sept. 14, 1932

To the Honorable the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, an intervenor in the above-mentioned cause, and with leave of the court, pleads to the said cause:

1

Motion to Dismiss:

Intervenor moves the court to dismiss the petition of the petitioners on the following grounds:

I. Said petition sets forth no sufficient reason why the orders of the Interstate Commerce Commission should be enjoined. On the other hand it shows that the said orders and report of the Commission, as set forth in said petition, should be sustained.

II. Because the facts set out in the report and found and established by the Commission therein on July 5, 1932 in its Docket No. 18364, in the case of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company; which report and orders thereon are set out in the [fol. 608] bill in this cause, show that there were constitutional rights and warrant *and* for the exercise of federal power which has been exercised by the Commission.

III. For that said bill and the exhibits thereon show that the Interstate Commerce Commission has made adequate findings of fact to sustain its said orders. The said findings of fact are shown by the petition and report to have been sustained by competent and sufficient evidence.

IV. For that the basic, essential and jurisdictional facts necessary to justify and sustain the act of the Commission have been made clearly to appear in the report and findings of the Commission; and the findings of fact made by the Commission were warranted and demanded by the evidence before the Commission.

V. For that the bill shows that the Commission did make findings supported by evidence as to the essential facts as to Florida intrastate rates on logs and the revenue therefrom, as to the effect of the intrastate rates, both as existing and prescribed, on the income of the Atlantic Coast Line Railroad Company, which did justify the aforementioned orders.

VI. For that the findings of fact by the Commission as set out in its said report and orders were and are sufficient to require and justify the report and orders.

Wherefore intervenor prays that the said bill be dismissed.

[fol. 609] Intervenor answers bill of petitioners and for answer thereto says:

1

Intervenor admits the allegations of paragraphs 1, 2, 3, 4, and 5 of the bill.

2

Intervenor admits that a number of petitions of intervention were permitted in said cause by the Interstate Commerce Commission, and that this includes the Wilson Cypress Company, and later the Wilson Lumber Company of Florida.

This Intervenor denies so much of paragraph six of said petition as is set out in the second cause of said paragraph 6.

Further answering the same, Intervenor says that this court, in its previous decision, has held against the contention that this cause proceeded before the Interstate Commerce Commission as though it were not a revenue case, and the Supreme Court of the United States likewise held against that position. This statement in the pleadings is based upon the oral statement made by the Chairman of the Georgia Public Service Commission in opposition to the introduction of certain evidence, which objection was overruled. This court dealt with that fact in its decision rendered January 17, 1929 in the case of State of Florida vs. United States, 30 Fed. (2), 116-120, saying,

"We do not think the oral statement attributed to the chairman of the Georgia Commission during the examiner's hearing, to the effect that he desired the lowering of [fol. 610] the interstate rate, rather than the raising of the intrastate rate, either changed the issues or limited the action of the Interstate Commerce Commission. Neither the examiner nor the counsel in their subsequent arguments before the Commission understood that the claim of discrimination by the intrastate rates against interstate commerce had been eliminated."

See also 282 U. S. 194.

The remaining allegations of said paragraph 6 are admitted.

3

The allegations of paragraph 7 are admitted.

4

The allegations of paragraphs 8, 9, 10, and 11 are admitted.

[fol. 611] 5

This intervenor admits the allegations of paragraph 12, which refers to the decision of the Supreme Court of the United States and its contents. Said decision is reported in *the* 282 U. S., 194

6

Answering paragraph 13, intervenor admits that the mandates of the Supreme Court of the United States were entered on March 7, 1931, and refers to the order of the court entering said mandates and the contents thereof.

7

Answering paragraph 14, this intervenor admits that the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company filed motions to reopen said proceeding before the Interstate Commerce Commission, its Docket No. 18364. The said motions are referred to for the contents thereof. Said motions were sufficient in form and substance to fully invoke the jurisdiction of the Interstate Commerce Commission, under each and every part of Section 13 of the Act known as the Act to Regulate Commerce.

It is denied that neither of said motions asserted that the level of the Florida intrastate rates was so low as to constitute a revenue burden upon interstate commerce.

It is admitted that replies to said petition were filed.

[fol. 612] 8

The allegations of paragraph 15 are denied by intervenor, except as hereinafter stated:

Intervenor admits that a request was made upon it that it produce at the hearing which was held in Jacksonville, Florida on June 10-12, 1931, a statement of the number of

cars, total tonnage, and charges applicable thereto covering transportation of logs of the tariff description involved in these proceedings, moving over a period of five years, beginning February 1, 1926 and ending January 31, 1931. This demand by the Florida Railroad Commission was dated May 16, 1931.

A like demand was made by the other contestants dated May 14, 1931. The Atlantic Coast Line Railroad Company replied under date of May 21, 1931 in part as follows:

"While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived thereon, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation of the interstate and intrastate movements, nor of the separation as between the several classes or length of logs handled. Neither during the periods referred to, nor at the present time, is it the practice of shippers to indicate in their bills of lading the class of logs offered for [fol. 613] shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

This demand was then submitted to the Interstate Commerce Commission by the Florida Commission and the various shippers on May 29, 1931. Reply was made thereto by the Atlantic Coast Line Railroad Company, setting up that it had no records from which that data could be compiled; and also that the subpoena requested was not for the production of any document or paper then in the hands of the Coast Line Company but sought rather to compel it, through subpoena, to prepare and compile certain statements; and in addition the request related to a miscellaneous mass of *omfpr, atopm* very large in volume, with no indication whatever as to the extent, if any, of the relevancy thereof to any issue in the proceeding.

The Commission denied the request for that it was not in compliance with the rule 13(b) of the rules of practice of the Interstate Commerce Commission for that it did not specify what books, papers or documents of the defendant (Atlantic Coast Line Railroad Company) were desired; and also because the application did not show that the books, papers or documents sought would be of service in the determination of the proceedings. The Interstate Com- [fol. 614] mission then called attention to the fact that

"defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary."

The hearing proceeded on June 10, 11 and 12, 1931 in Jacksonville and was adjourned to Washington, D. C. and further hearings were held on July 20 and 21, 1931. The Atlantic Coast Line Railroad Company submitted a great deal of data by way of exhibits and oral testimony as to many phases of transportation of logs. No further demand was made upon the Coast Line Company for this data and no further effort was made by the petitioners to have the Commission issue a subpœna duces tecum covering the matters and things mentioned. Furthermore, neither the notice or application for subpœna duces tecum stated that the matters and things required were within the power of the Atlantic Coast Line Railroad Company to furnish. The demand was not for the furnishing of certain [fol. 615] papers, but was for the statement of a great deal of data which the Atlantic Coast Line had not made and which it could not make from its records.

9

Answering paragraph 16, it is admitted that certain Examiners of the Interstate Commerce Commission, before whom the said proceedings had been assigned, submitted and served a tentative report.

The statement as to the contents of the said report is substantially correct.

The remainder of the allegations of said paragraph are denied.

[fol. 616] 10

Answering paragraph 17 of said bill, intervenor admits that exceptions were filed and the proceeding came on to be argued before the entire Commission on February 3, 1932; that on July 5, 1932, the Interstate Commerce Commission rendered its report and order in said proceeding, copy of which is attached to said bill marked "Exhibit B". The contents of said report are shown by the report itself.

The Commission did find that the Cummer scale of rates was and for the future would be unjustly discriminatory against interstate commerce, and directed the removal of said discrimination by putting into effect a scale of rates which are the same, mile for mile, as the interstate scale of rates prescribed by the Commission for the movement of logs between Florida and Georgia. The conclusions of the Commission were supported by intermediate findings, all of which are set out in said report. Said findings of the Commission are clear and unambiguous. The findings contained in said report were sufficient in all respects to sustain the Commission's order.

11

The allegations of paragraph 18 of said bill are admitted by the intervenor. The rates prescribed by the order of the Commission have not been put into effect, but in due course, will go into effect September 15, 1932.

[fol. 617] 12

Answering paragraph 19 of said bill the allegations thereof are admitted by this intervenor.

13

Answering paragraph 20 of said bill, intervenor says that the allegations thereof are conclusions of law and require no answer.

14

Answering paragraph 21 of said bill, intervenor denies the allegations thereof.

15

Answering paragraph 22 of said bill, intervenor says that each and every allegation of each and every sub-

paragraph thereof is denied, except as hereinafter stated. Answering each subparagraph intervenor says:

(1) The facts in the record of this case before the Interstate Commerce Commission show that the Cummer scale of rates are unjust and unreasonable and that the rates under the Cummer scale were insufficient to pay a fair proportionate share of the cost of maintaining an adequate railway system.

(2) The findings of the Interstate Commission are in exact accord with the Wisconsin case reported in 257 U. S. at page 563, and with the many cases which follow it; and in accordance with the rules laid down by the Supreme Court of the United States when this particular case was before that Court in the case of Florida versus United States, 282 U. S. 194, especially at pages 210 and 211.

[fol. 618] (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12). Intervenor denies the domain of the State of Florida has been invaded. The State of Florida has never had the right to make an intrastate rate which discriminates against interstate commerce or against persons and places and classes of traffic moving in interstate commerce, and any undertaking on the part of the State of Florida to do so was and has been at all the times herein involved, violative of the commerce clause of the Constitution of the United States;

There was no conflict of evidence before the Interstate Commission as to the relation of the Cummer scale of rates to many other rates including the rates on interstate shipments of logs from points in Florida to points in Georgia where the circumstances and conditions were substantially the same; nor was there any conflict as to the relation of the Cummer scale of rates to the rates on logs in other territories served by the Atlantic Coast Line; nor as to its relation to the rates on the same kind of logs over the Seaboard Air Line Railway and the Georgia and Florida Railway in the State of Florida; nor was there any controversy as to the relation of the Cummer scale of rates to the rates on other commodities having similiar transportation characteristics. The rates under the [fol. 619] Cummer scale are less than half of the rates under the interstate scale fixed by the Commission for movement of logs between Florida and Georgia; and they

are from one-third to one-half of the rates fixed on brick, lime, cement, cullet and other like things.

There was much evidence given before the Interstate Commission as to this relationship by this intervenor and by the Georgia Public Service Commission. There was no evidence offered before the Commission conflicting with that offered by this intervenor as to the mathematical ascertainment of the cost of handling logs intrastate in Florida, which ascertainment showed the cost of handling a car of logs to be substantially more than the revenue derived therefrom under the Cummer scale of rates.

This intervenor asserts that the evidence offered before and received by the Interstate Commission as to the unreasonableness of the Cummer scale of rates and as to its discrimination against interstate commerce was ample, conclusive and uncontradicted.

In addition, this intervenor says that the exhibits and evidence of the witness Perrin showed the total movement of logs during the two years from February 8, 1929, to [fol. 620] January 31, 1931, and the revenue derived therefrom. The evidence also showed the number of cars and tons of logs hauled for the years 1926-1930, both inclusive. It showed the total traffic in cars and tons and the log traffic for the years 1928, 1929 and 1930, and the per cent of log traffic to the total traffic for the system and for the State of Florida for those years. It also showed the total revenue, the log revenue and the per cent of log revenue to the total revenue for those three years. The log traffic was 7.0% of the total traffic in 1928 while the log revenue was 1.9% of the total revenue for that year; the log traffic was 5.0% of the total traffic for 1929 while the revenue from logs for that years was only 1.5%; and the log traffic in 1930 was 4.0% of the total traffic while the log revenue was only 1.3% of the total revenue for 1930.

The evidence before the Commission showed that if the Cummer scale of rates had been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system, there would have been a reduction in the revenue of this intervenor of $675,381.21.

[fol. 621] The evidence also showed that there were 21,913,000,000 feet of pine timber standing in Florida in July, 1931.

The Interstate Commerce Commission's scale of rates on logs was in effect from February 8, 1929 to January 31, 1931. During that period 18,602 carloads of logs moved intrastate in Florida producing gross freight revenues of $571,508.94. If the Cummer scale of rates had been effective the movement of those 18,602 carloads of logs under it would have produced $290,283.19 less than that actually collected.

The Interstate Commerce Commission found that this intervenor lost money on each carload of logs hauled by it intrastate in Florida under the Cummer scale of rates, and the evidence justified and required that finding; and therefore this log traffic did not bear its fair proportionate share of the cost of maintaining the railway system. The Commission found this was true even before anything was taken into consideration for taxes and for return on investment.

(13), (14) (15), (16), (17), (18), (19), and (20). To each of these subparagraphs of paragraph 22 of said bill intervenor answers by denying the allegations thereof. What has been said above is repeated in further answer thereto.

[fol. 622] The Commission not only found that the rates under the Cummer scale were unreasonable, but also found that the traffic moving under those rates does not pay its "fair proportionate share" of maintaining this intervenor's railway system. It found that:

"The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south."

It then found:

"These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone'."

The Commission meant by that the log traffic moving under the Cummer scale of rates did not pay the cost of moving it even before taxes and return on investment were taken into consideration.

The reasonableness or unreasonableness of the rates was not found by the Commission and then left there, but was found by the Commission as an element for use in determining whether or not that traffic to which those rates were applicable, carried its fair proportionate share of the costs.

[fol. 623] (21) and (22). The allegations of subparagraphs 21 and 22 of paragraph 22 are denied by this intervenor.

(23), (24), (25), (26), (27), (28), (29), (30), (31), and (32). Intervenor denies the allegations of each of these subparagraphs of paragraph 22 except as hereinbefore admitted or which may be herein now admitted.

Intervenor says that rate comparisons were used by the Interstate Commerce Commission; they were proper for it to use; they are used in almost every case where the reasonableness of rates is tested; the United States Supreme Court has recognized rate comparison as the proper method of ascertaining the reasonableness of rates, and especially is this true when the Interstate Commission makes an interstate rate for the same commodity in the same territory.

The Commission did give effect to system revenue returns, but it did so after it had, at great length and with great care, ascertained that the costs per unit in Florida are higher than the average for the entire road or system including Florida. It states that the costs per unit in Florida do not include anything for joint facility and equipment rents; and do not include the cost of transporting non-revenue or company freight. The Commission found:

[fol. 624] "But since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida."

The Commission in making its findings, did not give effect to any matter or thing that was not in evidence in this case.

This intervenor further avers that thorough and careful investigation was made by the Interstate Commerce Commission as to the handling of logs throughout the State of Florida.

(33) Answering subparagraph 33 of paragraph 22 of said bill, this intervenor denies that the rates prescribed

are beyond the issues raised in said proceeding, and further alleges that it is not important that the intrastate's rates prescribed in this proceeding are broader in their scope than the interstate rates prescribed in said proceeding. Intervenor avers that there is a scale of interstate rates applicable to that part of the State of Florida not covered by the interstate rates prescribed by the Commission in this proceeding.

[fol. 625] (34), (35), (36), (37). Each of these subparagraphs of paragraph 22 is denied. What has already been said above further answers each of them.

16

Answering paragraph 23 of said bill this intervenor says that the allegations contained therein have been carefully considered by the Interstate Commerce Commission. It is further alleged that the petitioners will not be injured by the charging of a reasonable rate by this intervenor for the service rendered by it in the hauling of logs, but intervenor will be irreparably injured by the charging of a low and unreasonable rate. Intervenor denies that it will be impossible for petitioners to pay the rates prescribed by the Commission in this proceeding, and operate their mills except at such heavy loss that their ability to operate such mills and to continue their business will be seriously impaired, if not destroyed. The mills of petitioners were operated under the same scale of rates prescribed in the proceeding for the two year period beginning February 8, 1929, and ending January 31, 1931.

[fol. 626] 17

Intervenor respectfully avers that this cause has been pending before the Interstate Commerce Commission and the courts for more than six years. The Interstate Commission has twice found that the rates under the Cummer scale are unjust and unreasonable. It has twice found that they are discriminatory against interstate commerce. Its first finding was sustained by this court. The judgment of this court was set aside by the Supreme Court of the United States because the Interstate Commission did not make sufficient intermediate findings. It was not set aside because of lack of evidence.

After that the cause was reopened before the Interstate Commission and was tried again practically de novo, al-

though all of the evidence in the previous case was before the Commission. The Commission reaffirmed its previous finding that the rates under the Cummer scale were unjust and unreasonable. It made intermediate findings in great detail, some of which have been referred to here and all of which are set out in the Commission's report of July 5, 1932.

The Commission found there was an interference with the accomplishment of the purpose of Congress because of a disparity of intrastate rates as compared with interstate rates and it proceeded to end that disparity by directly removing it; and it was specifically authorized so to do in the case of Florida v. United States, 282 U. S. at page [fol. 627] 211, and it has been authorized so to do in many other cases by the Supreme Court of the United States, especially in the Wisconsin case and the New York Passenger case, both of which are referred to and approved by the Supreme Court in the Florida case which was the appeal to the Supreme Court from this Court in this particular case.

18

Intervenor avers that the Interstate Commerce Commission has carefully considered this subject and all of the evidence offered, and in compliance with the law has made its findings that the rates under the Cummer scale are unreasonable and discriminatory against interstate commerce; that they did not bear their fair proportionate share of the cost of operation and maintenance; that they did not pay the cost of rendering the service required to be rendered; all of which was amply justified and required by the evidence in this case.

Wherefore, this intervenor respectfully prays that the prayers of petitioners be denied and that the order of the Interstate Commerce Commission complained of in this cause be not enjoined but that the same be allowed to go into effect in due course.

Respectfully submitted, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Company.

[fol. 628] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 629] [File endorsement omitted.]

[fol. 630] IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Sept. 14, 1932

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' bill of complaint contained, for answer thereunto, or unto so much of such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

II

Answering paragraphs III to VII, both inclusive, of the bill of complaint, the Commission admits that Division 4 of the Commission made and entered the report and order dated August 2, 1928, referred to in paragraph VI of the bill of complaint, in a proceeding before the Commission entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 146 I. C. C. 717, and the Commission refers the court to the text of said [fol. 631] report and order for full, complete, and accurate information concerning the contents of said report and order and for description of the proceedings before the Commission upon which said report and order were based.

III

Answering paragraphs VIII to XI, both inclusive, of the bill of complaint, the Commission admits that bills were filed in this court to enjoin, set aside and annul said order of August 2, 1928, and that the court, specially constituted as required by statute, sustained the validity of said order

and entered a decree dismissing the bills for want of equity. The opinions of the court are reported as State of Florida v. United States, 30 F. (2) 116 and 31 F. (2d) 580.

IV

Answering paragraphs XII and XIII of the bill of complaint, the Commission admits that upon appeal to the Supreme Court of the United States the aforesaid decree of this court was reversed, Florida v. United States, 282 U. S. 194.

V

Answering paragraph XIV of the bill of complaint, the Commission admits that shortly after the decision of the Supreme Court annulling the aforesaid order of August 2, 1928, the Commission, upon petitions filed by complainant and defendant, reopened the aforesaid proceeding, and, thereafter issued a report and order, dated July 5, 1932, a copy of which report and order are attached to and made a part of the bill of complaint as Exhibit B; that said report is published at 186 I. C. C. 157, and the Commission refers the court to said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the further proceedings before the Commission upon which [fol. 632] said report and order were, and are, based; that at further hearings in said reopened proceeding a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of July 5, 1932; that said report and order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and upon the evidence submitted at the original hearings in said proceeding, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

VI

Answering paragraph XV of the bill of complaint, Commission admits, as stated in its report on rehearing, 186 I. C. C. 157, at page 159, that at the further hearing the Florida interveners moved that the complaint should be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, and that, for the reasons stated in said report, said motion to dismiss was denied.

Further answering said paragraph XV the Commission admits that certain motions were made in the proceeding upon rehearing to require the Atlantic Coast Line Railroad Company to produce information showing the total volume of the Florida log traffic for a number of years prior to the date of the Commission's original order of August 2, 1928, and that the Commission denied said motions.

Further answering said paragraph XV the Commission alleges that the findings and conclusions in said report of [fol. 633] July 5, 1932, were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

VII

Answering paragraph XVI of the bill of complaint the Commission admits that after the final hearings in said proceeding the Commission's examiners made and issued a proposed report which was served upon the parties but alleges that said proposed report did not constitute the report of the Commission, and that the conclusions of the Commission differed in part from those of the examiners.

VIII

Answering paragraph XVII of the bill of complaint the Commission admits that after the proposed report of the examiners was served upon the parties the defendant and the interveners filed exceptions thereto and that subsequently the case was orally argued before the Commission. The Commission neither admits nor denies the allegations in said paragraph XVII relating to the contents of the Commission's report of July 5, 1932, but refers the court to the text of the report itself and to the Commission's order of the same date.

IX

Answering paragraph XVIII of the bill of complaint the Commission admits that on July 28, 1932, it issued a supplemental order in said proceeding, a copy of which is attached to the bill of complaint and made a part thereof as Exhibit C. The Commission further admits that on August 10, 1932, petitioners herein moved the Commission for postponement of the effective date of said order to November 15, 1932, and that said motion was denied by the Commission on August 13, 1932.

[fol. 634] X

Answering paragraphs XIX and XX of the bill of complaint, the Commission admits that the allegations therein contained are true.

XI

Answering paragraph XXI of the bill of complaint, the Commission denies the allegations of said paragraph.

XII

Answering paragraph XXII of the bill of complaint the Commission denies that said order of July 5, 1932, is unlawful for the reasons, or for any of the reasons, set forth in said paragraph.

Further answering said paragraph XXII, the Commission alleges that in making said report and order of July 5, 1932, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel.

The Commission further alleges that said order of July 5, 1932, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

XIII

Answering paragraph XXIII of the bill of complaint, the Commission denies that said order of July 5, 1932, will cause petitioners either irreparable damage or irreparable injury unless said order is enjoined and set aside by the court.

[fol. 635] Except as herein expressly admitted the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report and order of July 5, 1932, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, Of Counsel.

*Duly sworn to by Patrick J. Farrell. Jurat omitted in printing.*

[fol. 636] [File endorsement omitted.]

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[fol. 637] In United States District Court

No. 691

[Title omitted]

Temporary Restraining Order—Filed Sept. 14, 1932

This cause came on to be heard this September 14th A. D. 1932, before the Honorable Samuel H. Sibley, Circuit Judge, the Honorable E. Marvin Underwood, District Judge, and the Honorable Louie W. Strum, District Judge, and it appearing to the Court and the Court finding that the bill of complaint herein was filed in this cause on to-wit, September 9th, 1932, the purpose whereof was and is to enjoin, restrain and annul an order of the Interstate Commerce Commission entered July 5th, 1932 as amended

by said Interstate Commerce Commission July 28th, 1932 insofar as relates to intrastate rates in Florida, said order as amended as aforesaid having been entered by said Interstate Commerce Commission in that certain proceeding entitled Georgia Public Service Commission, complainant, versus Atlantic Coast Line Railroad Company, defendant, and being Interstate Commerce Commission Docket 18364, and it further appearing to the Court and the Court finding that in due course the Honorable E. Marvin Underwood Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, did duly call to his assistance the Honorable Samuel H. Sibley, Circuit Judge, and the Honorable Louie W. Strum, District Judge, pursuant to Acts of Congress in such cases made and provided, [fol. 638] upon the request of the complainants in this cause, and the said cause was duly and regularly set by and before said Court constituted of said three Judges as aforesaid, to be heard on September 14th, 1932 at 10:00 o'clock A. M. upon application of the complainants for a temporary stay or suspension of said order of said Interstate Commerce Commission, and for a temporary restraining order and injunction restraining and enjoining the said order and the effect thereof, and it further appearing to the court and the Court finding that there are important questions of law and fact to be considered and determined in said cause and that unless the said order be temporarily enjoined and restrained that irreparable injury will result to the interested shippers within the State of Florida, and it also appearing from the sworn bill of complaint and from the affidavits of L. F. Shore and Ralph Hunt filed in said cause and submitted to this Court that irreparable damage will result to petitioners and the shippers of logs in Florida in that the operations of divers manufacturers of lumber will be substantially hindered, delayed, and embarrassed and such manufacturers subjected to substantial loss and damage on that account, it is thereupon,

Considered, ordered and adjudged by the Court that the said order of the Interstate Commerce Commission dated July 5th, 1932, as amended by said order of July 28, 1932, as aforesaid, insofar as the same relates to intrastate rates in Florida, be and the same hereby is temporarily stayed and suspended until sixty (60) days from the date hereof or until the further order of the Court.

[fol. 639] In open court this the 14th day of September, A. D. 1932, at 6.07 o'clock p. m.

Samuel H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

[fol. 640] [File endorsement omitted]

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[fol. 641] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Sept. 22, 1932

United States, one of the defendants in the above-entitled cause, for answer to the bill of complaint filed therein against it answers and says:

I

United States admits for the purposes of this suit that the allegations contained in paragraphs I, II, III, IV and V of the bill are true.

II

United States admits that the allegations made and contained in paragraphs VI to XIII, both inclusive, of the bill are true, with this exception: it denies that the second subdivision of said paragraph VI contains a complete or accurate statement of the position of the Georgia Public Service Commission at said hearing, and respectfully refers the Court to the original complaint of said Georgia Commission and the testimony presented by it at said hearing, all [fol. 642] of which are now of record before this Court, the same having been introduced at the hearing held herein on September 14.

III

Answering paragraph XIV of the bill, United States admits that motions to reopen the proceedings before said Interstate Commerce Commission were filed by the Georgia Public Service Commission and the Atlantic Coast Line

Railroad Company, and admits that replies to said motions were filed by the State of Florida, Florida Railroad Commission, Brooks Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company, and admits further that said proceedings were reopened by said Commission, and that Wilson Lumber Company of Florida was by it permitted to intervene as a party to said proceedings, but United States denies that said paragraph XIV contains a full and complete description or statement of the matters and things set forth in said motions and respectfully refers the Court to said motions as filed with the Commission and as introduced in evidence before this Court.

IV

Answering paragraph XV of the bill, United States denies all the allegations thereof with these exceptions: (1) it admits that petitioners, or some of them, made the formal motions described in said paragraph XV, and that said motions were denied; and (2) it admits that petitioners, or some of them, demanded and sought to have said Commission require certain information with respect to revenue [fol. 643] produced from transportation of logs by the Atlantic Coast Line Railroad as described in said paragraph, and that said Commission declined to make such requirement upon the Atlantic Coast Line Railroad Company, but United States denies that there is no evidence in the record adduced before the Interstate Commerce Commission concerning the revenues produced from intrastate traffic in logs under the Florida intrastate rates (the Cummer scale).

V

Answering paragraph XVI of the bill, United States admits that the proposed report was prepared by examiners of said Commission and served upon parties to the proceeding, but alleges that all the allegations of said paragraph XVI are irrelevant and immaterial inasmuch as the proposed report of said examiners is not the opinion or report of the Commissioners, and it is neither official nor binding upon either it or the parties to said proceeding.

VI

Answering paragraph XVII of the bill, United States admits that exceptions were filed to the report proposed by

the examiners, that the oral argument was heard by the Commissioners, at which the parties to the proceeding, including petitioners, appeared and submitted such argument as they desired; that on July 5, 1932, said Interstate Commerce Commission rendered its report and order, and that Exhibit B to the bill is a true copy thereof. Answering the remainder of said paragraph XVII, United States respectfully refers the Court to said Exhibit B for a full [fol. 644] and complete statement of the matters, things and conclusions stated and reached by the Commission therein.

VII

United States admits the allegations of paragraphs XVIII, XIX and XX of the bill.

VIII

United States denies all the allegations made and contained in paragraphs XXI, XXII and XXIII of the bill; and denies that said order entered by the Commission on July 5, 1932, is unlawful or invalid for the reasons set forth in said paragraphs, or any of them, or for any other reason; and United States particularly denies that petitioners will suffer irreparable or other legal damage or injury if said order is enforced or is not enjoined by this Court.

Except as herein expressly admitted, United States denies each and every allegation made and contained in the bill of complaint, and each of the several paragraphs thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the petitioners, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney. John Lord O'Brian, the Assistant to the Attorney General.

[fol. 645] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 646] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 691

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable Judges of the District Court in and for the Northern District of Georgia, in Chancery Sitting:

Wilson Cypress Company, a corporation, and Wilson Lumber Company of Florida, a corporation, by their undersigned attorneys, with leave of Court first had and obtained, bring this their Supplemental Bill of Complaint herein against the United States of America and Interstate Commerce Commission and Atlantic Coast Line Railroad Company, defendants. Thereupon your orators complain and say:

[fol. 647] 1. That heretofore, to-wit: on September 9th, 1932, your orators filed in this cause their bill of complaint hereafter called the "original bill" against United States of America and Interstate Commerce Commission, defendants herein, wherein and whereby they sought to annul, set aside and enjoin that part of the order entered by said Interstate Commerce Commission in its Docket No. 18364, dated July 5, 1932, as amended July 28, 1932, wherein and whereby the said Interstate Commerce Commission attempted to invade the domain of the State of Florida and to dis-establish the scale of lawful rates in force and effect for the transportation of logs, except walnut, cherry and cedar, in carloads, minimum weight 50,000 pounds, excess in proportion (herein called the Cummer Scale) upon the lines of the Atlantic Coast Line Railroad Company in intrastate commerce in Florida and to require said Atlantic Coast Line Railroad Company, a common carrier and subject to the jurisdiction and regulation of the State of Florida, to establish, put in force and maintain a certain other scale of rates for the transportation of such logs prescribed in and by the terms of said order.

The said cause came on to be heard in said City of Atlanta before the Honorable Samuel H. Sibley, United States

[fol. 648] Circuit Judge, and the Honorable Louie W. Strum and the Honorable E. Marvin Underwood, United States District Judges, on motion of your orators after due notice to the said defendants for an order of this Court staying said order of the Interstate Commerce Commission pending this proceeding pursuant to the laws of Congress in such cases made and provided; that at such hearing the said Atlantic Coast Line Railroad Company by order of this Court was permitted to intervene in said cause and did intervene therein and filed its answer to the original bill of complaint; that thereafter answers were duly filed by the defendants, United States of America and Interstate Commerce Commission, and certified copies of the proceedings had by and before the said Interstate Commerce Commission in said docket No. 18364 were duly filed in evidence in said proceeding; and that on, to-wit: September 14, 1932, this Court did make and enter in said cause its order wherein and whereby the said order of the Interstate Commerce Commission and the effect thereof was duly stayed until further order of the Court, but not to exceed sixty days from the date thereof. That no final judgment or decree of this Court has been entered in nor have any issues in the original suit been determined by this Court.

[fol. 649] 2. That thereafter, to-wit, on October 12th, 1932, your orators filed with said Interstate Commerce Commission in said proceeding before it a motion to set aside the said order of said Interstate Commerce Commission and for further hearing in and reconsideration of said proceeding, and in and by said motion averred that after July 5, 1932 (the date of said order of the Interstate Commerce Commission), and prior to September 15, 1932, the date on which said order of the Interstate Commerce Commission was by its terms to become effective, at least seven railroad carriers doing business in the Southern territorial rate group and operating within and between seven different Southern states, including Florida, had filed with said Interstate Commerce Commission and said Commission had permitted to become effective a scale of rates (hereinafter sometimes referred to as the Newly Reduced Rates) for the transportation of logs which was substantially lower than the rates theretofore obtaining for application upon the lines of such carriers, and that such

scale of rates was and is a mileage scale expressed in lump sum terms per carload, regardless of weight, and was and is upon the basis hereinafter set forth and was and is published in the tariffs hereinafter described by the carriers hereinafter named, viz:

[fol. 650]

| Distance | Rate per car regardless of weight |
|---|---|
| 25 miles and less | $12.00 |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 20.00 |

Authorities for Rates

| Railroad tariff No. | I. C. C. tariff No. | Issued by | Application |
|---|---|---|---|
| 10956 | B–860 | M.&O.R.R. | From stations on the M.&O.R.R. to Columbus, Corinth, Miss., Humbolt, Jackson, Tenn. Meridian, Miss., Mobile, Ala., Wickliffe, Ky., and Whistler, Ala. |
| 590–R | 7789 | I.C.R.R. | From stations on the I.C.R.R. to Corinth, Miss., Dyersburg, Tenn., Fernwood, Granada, Jackson, Miss., Jackson, Tenn. McComb, Pickens, Miss., Ponchatula La., Water Valley, Miss. |
| 602–M | 7810 | Y.&M.V.R.R. | From stations on the Y.&M.V.R.R. to Charleston, Clarksdale, Miss., Denham Springs, La., Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Philips, Stevenson, Tehula, Trotters Point, Vicksburg and Yazoo City, Miss. |
| 3 | 3284–A | N.C.&St.L. Ry. | Applies on interstate traffic between points on the N.C.&St.L. Ry. |
| 6 | Rate Issue | N.C.&St.L. Ry. | Applies on Tennessee State Traffic between points on the N.C.&St.L. Ry. |
| 6 | A–10425 Supp. 5 | Sou. Ry. | From points in Alabama, Georgia and Tennessee to Chattanooga, Tenn. (Note 1). |
| 3155–F | 9019 | St.L.S.F. Ry. | Between stations on the St. L.S.F. Ry. in Alabama, Florida and Mississippi (Note 2). |
| * | 2848 | Cent. of Ga. Ry. | Between stations on Cent. of Ga. Ry. and Montgomery, Ala. (Note 3). |

NOTE 1. Sou. Ry.—25 miles and less, 50 cents per car more than above scale; all other distances the same as above scale.

NOTE 2. St. L. S. F. Ry.—100 miles and over 75, $2.50 per car more than above scale; all other distances the same as above scale.

NOTE 3. Cent. of Ga. Ry.—$2.50 per car more than above scale for all distances

* This tariff (No. 2848) was republished by I.C.C. No. 2867-G.F.O. Special 140-A, effective intrastate Jan. 23, 1933, and interstate Feb. 23, 1933, which extends application of rates to shipments to Dothan, Ala., from points between Eagle Pond, Ga., and Florala, Ala., inclusive of Lakewood, Fla.

[fol. 651] And in and by said motion and petition for rehearing it was further averred that at or about the same time the Newly Reduced Rates were permitted by the Interstate Commerce Commission and became effective, similar rates applicable to the transportation of logs in the Southwestern territory (that is to say, in the territory west of the Mississippi River) were published by divers railroad carriers doing business in Southwestern territory and filed with the said Interstate Commerce Commission and likewise permitted by said Commission and became effective in the Southwestern territory; that among the tariffs naming such Reduced Rates applicable in the Southwest as aforesaid are the tariffs hereinafter described, issued by the railroads and applicable as hereinafter set forth:

| Railroad tariff No. | I. C. C. tariff No. | Issued by | Application |
|---|---|---|---|
| 5683-AA | A-8212 | Mo. Pac. R.R. | Between points on Mo. Pac. R.R. in Arkansas and Louisiana, Missouri, Oklahoma and Texas. |
| 31134-N | C-12130 | C.R.I.&P. Ry. | Between points on the C.R.I. & P. Ry. in Arkansas and Louisiana. |
| 2915-B | 4676 | St.L.S.W. Ry. | Between points on the St.L.S.W. Ry. in Arkansas, Louisiana and Missouri. (Applies on cars of 90,000 lbs. or less, excess loads to be charged proportionately). |
| 1485-A | 9346 | St.L.S.F. Ry. | Between points on the St. L.S.F. Ry. in Arkansas and between points in Arkansas and points in Missouri. |

[fol. 652] That the reduced rates so established in the Southwestern territory as aforesaid are per carload rates regardless of weight and are identical in level with the Newly Reduced Rates established in the Southern Rate group as aforesaid, save that in Southwestern territory the rate per car for the transportation of distances of 100 miles and over 75 miles is $22.50 per car, and that on the St. L.-S. F. Ry., the said rates are applicable on cars of 90,000 pounds or less, excess loads to be charged proportionately.

3. That on, to-wit, October 12th, 1932, and after the filing of said motion and petition for rehearing before said Interstate Commerce Commission your orators presented for filing in this cause a supplemental bill of complaint wherein your orators set forth said Newly Reduced Rates and in and by said supplemental bill it was further alleged that, as soon as possible after learning of said newly reduced rates, your orators had filed with said Interstate Commerce Commission, said motion and petition for rehearing, and

your orators prayed this Court to stay the operation and effect of said order of the Interstate Commerce Commission until said motion for rehearing should have been acted upon by said Commission, and until the further order of this Court, and that in the event said Interstate Commerce Commission should refuse to set aside its said order that this Court would decree said order to be invalid and unlawful, and enter a decree enjoining said order. That at the time of presenting said supplemental bill of complaint to this Court your orators moved this Court for leave to file the same and said motion was set for hearing on October 22, 1932, before said Court.

[fol. 653] 4. That on, to-wit, October 21, 1932, said Interstate Commerce Commission entered its order reopening the proceedings in its said Docket No. 18364, and assigned said proceeding for further hearing for the purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing therein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditons, or any of them, were present with respect to the Florida intrastate log rates of the Atlantic Coast Line Railroad Company, and further suspending the operation of its said order of July 5, 1932, as amended July 28, 1932, until its further order. That thereupon, said order being brought to the attention of the Court, this Court cancelled said hearing set for October 22, 1932, upon the above-mentioned motion for leave to file said supplemental bill, and no further proceedings were had in this cause.

5. That on November 21 and 22, 1932, said further hearing before said Interstate Commerce Commission, under its said Docket No. 18364, was held. That at said hearing in said proceeding, in addition to the numerous tariffs publishing said Newly Reduced Rates hereinabove mentioned and described, there were filed in evidence certain other tariffs (only discovered by your orators after the filing of said motion and petition for rehearing) publishing said Newly Reduced Rates applicable in said Southern territory. That said additional tariffs were recently—in many instances after the presentation of said supplemental bill—filed with said Interstate Commerce Commission by seven railroad carriers doing business in said Southern terri-

torial rate group and operating within and between six [fol. 654] different Southern states, and said Interstate Commerce Commission has permitted to become effective the scale of rates therein published, said scale of rates being a mileage scale expressed in lump sum terms per carload, regardless of weight, (being the same as the Newly Reduced Rates hereinabove set forth) as follows:

| Distance | Rate per car regardless of weight |
|---|---|
| 25 miles and less | $12.00 |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 20.00 |

and said scale of rates being published in the tariffs hereinafter described by the carriers hereinafter named, viz:

| I. C. C. tariff No. | Supplement No. | Issued by | Application |
|---|---|---|---|
| A-10472 | | Sou. Ry. | From Sou. Ry., A. G. S. and C. N. O. & T. P. stations in Ga. and Ala. to to Chattanooga, (Note 1) and from Sou. Ry. stations in Miss., Ala. & Tenn. to Corinth, Miss. |
| A-659 | 115 | Glenn for a/c T.A.&G. Ry. | From T. A. & G. stations to Chattanooga and Gadsden, Ala. (Note 1). |
| A-10448 | 2 | Sou. Ry. | From Sou. Ry. stations between Memphis, Tenn. and Corinth, Miss., to Memphis, Tenn. |
| A-10425 | 6 | Sou. Ry. | From all Sou. Ry. stations in Ala. to Mobile and Selma, and from Sou. Ry. stations in Ala. and from A.G.A. stations in Ala. and Miss. to York, Ala. (Note 2). |
| 7789 | | Ill. Cent. R.R. | From stations on the G.&S.I. to Jackson, Miss., and Laurel, Miss. |
| 3101 | | N.O.&N.E. R.R. | From N.O.&N.E. stations to Laurel, Miss., (Note 3). |
| 36 | 6 and 8 | Columbus & Greenville R.R. | From all stations on the C.&G. to Columbus, Greenville, Grenada, and West Point, Miss. (Note 4). |
| A-7638 | | S.A.L. Ry. | From S.A.L. stations in Ala. between Omaha, Ga., and Montgomery, Ala. (Note 2). |
| [fol. 655] | | | |
| A-129 | | W. Ry. of Ala. | From all stations on W.R. of A. to Montgomery, Ala. and Selma, Ala. (Note 2). |
| 1137 | | G.M.&N. R.R. | Between all G.M.&N. stations intrastate in Mississippi (Note 5). |
| A-10467 | | Sou. Ry. | To Charleston, S. C. from Augusta, Ga. and Edgefield, Park Hill, Baynham, Columbia, Hardeeville, Denmark, Bath, Kingville, May, Orangeburg and Sumter, S. C. (Note 6). |

Rates on conduits, cross arms, cross-ties, fence posts, lumber, paving blocks, piling, poles and timber.

NOTE 1. Sou. Ry. rates to Chattanooga and Gadsden—25 miles and less 50 cents per car more than above scale, all other distances same as above scale.

NOTE 2. S.A.L. Ry. rates to Montgomery, W. Ry. of Ala. rates to Montgomery and Selma, Sou. Ry. rates to Mobile, Selma and York—$2.50 per car more than above scale for all distances.

NOTE 3. N.O.&N.E.R.R. rates to Laurel, Miss.—25 miles and less are 50 cents more than above scale, and 100 miles and over 75 miles are $2.50 more than above scale, other distances same as above scale.

NOTE 4. Columbus & Greenville R.R. scale extends over 100 miles as follows:

| | |
|---|---|
| 125 miles and over 100 miles | $22.50 per car |
| 150 miles and over 125 miles | 25.00 per car |
| 170 miles and over 150 miles | 27.50 per car |

NOTE 5. G.M.&N.R.R. rates—100 miles and over 75 miles $2.50 per car more than scale, all lesser distances same as above scale.

NOTE 6. This Sou. Ry. scale to Charleston is not a per car, regardless of weight, scale. It is published on a basis of cents per hundred pounds as follows:

| | Per hundred pounds |
|---|---|
| From Augusta, Ga. and from Edgefield, Park Hill, Columbia, Hardeeville, Kingville and Sumter, S. C. to Charleston, S. C. | 2 cents |
| From Baynham, Bath and May, S. C. to Charleston, S. C. | 1½ cents |
| From Denmark and Orangeburg, S. C. to Charleston, S. C. | 1 cent |

[fol. 656] 6. That thereafter, to-wit, on January 9, 1933, said Interstate Commerce Commission, in its second report on further hearing, affirmed all of the findings in its report on further hearing and by its order of January 9, 1933, in said proceeding, as amended by its order of January 19, 1933, vacated its order of October 21, 1932, and ordered that after February 25, 1933, the aforesaid order of July 5, 1932, as amended by said order of July 28, 1932, should remain in full force and effect until the further order of said Commission. That a copy of said second report on further hearing and order of January 9, 1933, and a copy of said amendatory order dated January 19, 1933, are attached hereto and marked Exhibits "A" and "B" respectively, and made a part hereof.

7. That on, to-wit, February 8th, 1933, your orators filed their petition with said Interstate Commerce Commission praying for further hearing in said proceeding before said Commission, a copy of said petition being hereto attached and marked "Exhibit C" and made by reference a part hereof. That, as is set forth in and by sail petition for rehearing, in addition to all the tariffs hereinabove mentioned and described publishing said Newly Reduced Rates, certain additional tariffs have been recently filed with said Interstate Commerce Commission by eight railroad car-

riers doing business in said Southern territorial rate group and operating within and between ten different Southern states, and said Interstate Commerce Commission has permitted to become effective the scale of rates therein published, being substantially the same as said Newly Reduced Rates hereinabove set forth. That said additional tariffs and the carriers publishing the same and the rates therein [fol. 657] published and the application of such rates are as follows:

Louisville & Nashville Railroad

Tariff I.C.C. No. 16022, Supp. 19

| Rate | Per car regardless of weight | Application |
|---|---|---|
| 25 miles and less | $12.00 | Over entire L.&N. system, except on Alabama and Florida intrastate traffic, and except on traffic from, to, or between points in Illinois, Indiana, Missouri and/or Ohio. |
| 50 miles and over 25 miles | 15.00 | |
| 75 miles and over 50 miles | 17.50 | |
| 100 miles and over 75 miles | 20.00 | |

From Linsey, Ky. to Knoxville, Tenn. (140 miles) $29.50 per car, regardless of weight.

Atlantic Coast Line Railroad

Tariff I.C.C. No. B-2745 (Rule 127)

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 100 miles and under | 2½ | From A.C.L. stations to Montgomery, Ala. |
| 125 miles and over 100 miles | 3½ | |
| 175 miles and over 125 miles | 4½ | |

Atlantic Coast Line Railroad

Tariff I.C.C. No. B-2745, Supp. 1. Rates on Cross Arms, Crossties, Lumber, Piling, Poles and Timber Not Otherwise Specified

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| To Charleston from Gourdin | 1 | To Charleston from following A.C.L. stations in South Carolina, Gourdin *(51) Florence to Lanes (102), Sumter (94), Gamble to Carpon (56), Dillon to Florence Transfer (132), Mullins to Evansdale (130), Darlington to Haynesworth (110), Berry to Clio (128), Currans to Nix (104), Ebenezer to Ryttenburg (95) Bennettsville to Lides (134), Maxie to Noah (138), Wisacky to Lucknow (115), Floyd to Perkins (116), Auburn and Hartsville (122). |
| To Charleston from: Florence to Lanes, Sumter and Gamble to Carpon | 1½ | |
| To Charleston from: Dillon to Florence Transfer, Mullins to Evansdale, Darlington to Haynesworth, Berry to Clio, Currans to Nix, Ebenezer to Ryttenburg | 2½ | |
| To Charleston from: Bennettsville to Lides, Maxie to Noah, Wisacky to Lucknow, Floyd to Perkins, Auburn and Hartsville | 3 | |

* Distance to Charleston in parentheses.

8. That said petition for rehearing was denied by said Commission on February 13th, 1933. That no final judgment or decree of this Court has been entered in, nor have any issues in the original suit been determined by this Court.

9. That your orators aver all and singular the matters and things averred in and by said original bill of complaint and in addition thereto, aver the following:

[fol. 658] Central of Georgia Railway

Tariff I.C.C. No. 2851

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 50 miles and under | 2½ | From C. of G. stations to Augusta and Waynesboro, Ga. |
| 75 miles and over 50 miles | 3 | |
| 100 miles and over 75 miles | 3½ | |

Norfolk & Southern Railroad

Tariff I.C.C. No. A. 760. Rates Lumber, Piles and Other Forest Products

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 50 miles and under | 3 | From N. & S. stations to Norfolk, Va. |
| 100 miles and over 50 miles | 4 | |
| 150 miles and over 100 miles | 5 | |
| 200 miles and over 150 miles | 6 | |

Georgia & Florida Railroad Company

Tariff I.C.C. No. 558

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 50 miles and under | 2½ | Over entire line of G. & F. R.R. |
| 75 miles and over 50 miles | 3 | |
| 100 miles and over 75 miles | 3½ | |
| 160 miles and over 100 miles | 4 | |
| 200 miles and over 160 miles | 4½ | |

Savannah & Atlanta Railway

Tariff I.C.C. No. 115

| Rate | Cents per 100 lbs. | Application |
|---|---|---|
| 25 miles and under | 2½ | From S. & A. Ry. stations to Warrenton, Sardis and Newington, Ga. |
| 50 miles and over 25 miles | 3 | |
| 75 miles and over 50 miles | 3½ | |

[fol. 659] Seaboard Air Line Railway

Tariff I.C.C. No. A-7528, Supp. 8

| Rate | Application |
|---|---|
| $2.50 per 1,000 feet Doyle Scale (Minimum carload of 4,000 feet required—approximately 48,000 lbs.) | From S.A.L. Ry. stations between and including Branchville, Va. and Littleton, N. C. *(44.7) to Boykins, Va., and from S.A.L. Ry. stations between and including Severn, N. C. and Lewiston, N. C. (35) to Boykins, Va. |

* Distance to Boykins in parentheses.

Seaboard Air Line Railway

Tariff I.C.C. No. A-7528, Supp. 9

| Rate | Application |
|---|---|
| 3½ cents per 100 lbs. (Minimum carload of 80,000 lbs. required.) | Fitz Siding, N. C. to Norfolk, Va. (61 miles) |

Southern Railway

Tariff I.C.C. No. 10425, Supp. 7

| Rate | Per Car regardless of weight | Application |
|---|---|---|
| 25 miles and under | $12.50 | From C.N.O. & T.P. stations to Knoxville, Tenn.; from Sou. Ry. stations to Dayton, Tenn.; and from Sou. Ry. stations to Fayette, Ala. |
| 50 miles and over 25 miles | 15.00 | |
| 75 miles and over 50 miles | 17.50 | |
| 100 miles and over 75 miles | 20.00 | |

[fol. 660] (a) That all of said Newly Reduced Rates hereinabove mentioned and described are now in effect for the transportation of logs in Southern and Southwestern territory, and said Interstate Commerce Commission has permitted them to become effective. That all of said tariffs, being 34 in number, published by 21 different railroad carriers operating in and between 14 different Southern and Southwestern States are more particularly described in said proceeding before said Interstate Commerce Commission, including said motion and petition for rehearing last filed by your orators therein. That in order to show the wide-spread application of said rates your orators have attached hereto a railroad map of the United States, which said map is marked "Exhibit D", and made by reference a part hereof. That the lines marked upon said "Exhibit D" in red color show and represent the application of said Newly Reduced Rates upon the railroad lines of the numerous various carriers publishing the same. That said Newly Reduced Rates are now in effect on numerous railroad carriers in every State in the Southeastern territory, south of the northern boundaries of Kentucky and Virginia and east of the Mississippi River, including Florida, and on or over all or portions of the lines of every railroad of any consequence which operates in interstate commerce south [fol. 661] of the States of Kentucky and Virginia, including the defendant, Atlantic Coast Line Railroad, and including the Louisville & Nashville Railroad which is controlled through stock ownership by said Atlantic Coast Line Railroad, and including the Nashville, Chattanooga & St. Louis Railroad which is controlled through stock ownership by said Louisville & Nashville Railroad. That said Newly

Reduced Rates are applicable in Florida in interstate commerce on and over the lines of said Louisville & Nashville Railroad and the Central of Georgia Railroad, and are likewise applicable in Florida in interstate and intrastate commerce on and over the lines of the St. Louis-San Francisco Railway and the lines of the Georgia & Florida Railroad.

(b) That said second report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, states that said Newly Reduced Rates in Southwestern territory (that is, west of the Mississippi River) "should expire by limitation December 21, 1932", whereas the testimony in said proceeding before said Interstate Commerce Commission shows, without contradiction, that said railroads publishing said tariffs in said territory had assented to an extension of those scales of rates throughout the year 1933, and your orators aver that various tariffs have been filed with said Interstate Commerce Commission since the last hearing in said proceeding so extending said expiration [fol. 662] date.

(c) That the Cummer Scale is a mileage scale of rates expressed in lump sum terms per car of minimum weight of 50,000 pounds, excess in proportion; that the Newly Reduced Rates which said Interstate Commerce Commission has permitted to become effective in interstate commerce in Southeastern and Southwestern territories other than Florida, are expressed in lump sum terms per car regardless of weight; that the capacity of cars in which logs ordinarily are loaded for transportation in Southwestern and Southeastern territories ranges from 80,000 to 100,000 pounds per car, with the privilege of overloading to the extent of 10% of such capacity. And your orators aver that shippers generally, particularly shippers of commodities such as logs, in shipping upon rates applicable to carloads regardless of weight, customarily load to the full carrying capacity of the car; and that the loading of logs of all kinds, including hardwood moving in the Southeastern and Southwestern territories and in Florida, upon lump sum per car rates regardless of weight would substantially exceed 70,000 pounds per car, and would average from 75,000 to 85,000 pounds per car or more.

(d) That the table below compares for the hauls therein specified the rates, per car of the weight mentioned, for the

transportation of logs upon the Cummer Scale intrastate in Florida (Column 2); upon the Newly Reduced Rates (Column 3); and upon the scale prescribed by said Interstate Commerce Commission as aforesaid intrastate in Florida (Column 4):

[fol. 663]

| (1) Hauls in miles | (2) Cummer scale | (3) Newly reduced rates in S. E. territory | (4) Scale fixed by I. C. C. |
|---|---|---|---|
| Computed on Carload of 70,000 Pounds | | | |
| 25 miles | $11.97 | $12.00 | $24.50 |
| 50 miles | 14.70 | 15.00 | 31.50 |
| 75 miles | 16.10 | 17.50 | 38.50 |
| 100 miles | 18.20 | 20.00 | 42.00 |
| Computed on Carload of 75,000 Pounds | | | |
| 25 miles | 12.82 | 12.00 | 26.25 |
| 50 miles | 15.75 | 15.00 | 33.75 |
| 75 miles | 17.25 | 17.50 | 41.25 |
| 100 miles | 19.50 | 20.00 | 45.00 |
| Computed on Carload of 80,000 Pounds | | | |
| 25 miles | 13.68 | 12.00 | 28.00 |
| 50 miles | 16.80 | 15.00 | 36.00 |
| 75 miles | 18.40 | 17.50 | 44.00 |
| 100 miles | 20.80 | 20.00 | 48.00 |
| Computed on Carload of 85,000 Pounds | | | |
| 25 miles | 14.54 | 12.00 | 29.75 |
| 50 miles | 17.85 | 15.00 | 38.25 |
| 75 miles | 19.55 | 17.50 | 46.75 |
| 100 miles | 22.10 | 20.00 | 51.00 |
| Computed on Carload of 90,000 Pounds | | | |
| 25 miles | 15.40 | 12.00 | 31.50 |
| 50 miles | 18.90 | 15.00 | 40.50 |
| 75 miles | 20.70 | 17.50 | 49.50 |
| 100 miles | 23.40 | 20.00 | 54.00 |
| Computed on Carload of 95,000 Pounds | | | |
| 25 miles | 16.26 | 12.00 | 33.25 |
| 50 miles | 19.95 | 15.00 | 42.75 |
| 75 miles | 21.85 | 17.50 | 52.25 |
| 100 miles | 24.70 | 20.00 | 57.00 |
| Computed on Carload of 100,000 Pounds | | | |
| 25 miles | 17.12 | 12.00 | 35.00 |
| 50 miles | 21.00 | 15.00 | 45.00 |
| 75 miles | 23.00 | 17.50 | 55.00 |
| 100 miles | 26.00 | 20.00 | 60.00 |

[fol. 664] (e) That said report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, find that said Newly Reduced Rates are "on substantially the same level as the Cummer Scale", and your orators aver that in practical operation and effect each and every of said Newly Reduced Rates hereinabove referred to are on sub-

stantially the same level as the Cummer Scale, or are on a lower level than the Cummer Scale.

(f) That said Newly Reduced Rates are published in some instances as transit rates and in more than twenty other instances as local rates. That the Cummer Scale of rates, while in terms a local scale, is in practical operation and effect tantamount to a transit scale, in that all or substantially all of the outbound products manufactured by the several shippers receiving logs under the Cummer Scale move over the lines of the Atlantic Coast Line Railroad Company, under and by virtue of the terms of service contracts exacted from such shippers in the case of trainload shipments and by virtue of the location of the mills of many if not most of such other shippers as receive logs under the Cummer Scale. That in said proceedings before said Inter-State Commerce Commission your orators offered and attempted to prove that said Cummer Scale in practical operation and effect is tantamount to a transit scale as aforesaid [fol. 665] and, upon objection of said Atlantic Coast Line Railroad, said offer and the evidence supporting it was refused and rejected by said Interstate Commerce Commission. That in practical operation and effect said newly reduced rates are substantially similar to the Cummer scale, and in many instances substantially lower than said Cummer Scale.

(g) That in seeking to justify its invasion of the domain of the State of Florida, the Interstate Commerce Commission relied upon and gave consideration to comparisons of the said Cummer Scale with divers scales of transit and other rates on logs then effective upon divers other railroads in said Southeastern territory, and in many instances the very rates so compared with said Cummer Scale have been superseded in whole or in part by the Newly Reduced Rates which said Interstate Commerce Commission has suffered and permitted lately to become effective as aforesaid.

(h) That the circumstances and conditions surrounding the transportation of logs in intrastate commerce in Florida over the lines of the defendant Atlantic Coast Line Railroad are similar to, and as favorable or more favorable than, the circumstances and conditions surrounding the transportation of logs over the railroads, and under

the tariffs, publishing said Newly Reduced Rates. And your orators aver that there is now a substantial movement of logs by truck in Florida.

[fol. 666] (i) That the action of said Interstate Commerce Commission in permitting said newly reduced rates to become effective and to supersede the substantially higher interstate rates theretofore existing for the transportation of logs, is substantially concurrent with the attempt on the part of said Commission to supersede said Cummer scale of rates in intrastate commerce in Florida with the substantially higher scale of rates prescribed by said Commission as aforesaid. That said Interstate Commerce Commission at no time has attempted to fix intrastate rates for the transportation of logs in any state in the Southern territorial rate group other than in Florida, or on any railroad other than the Atlantic Coast Line Railroad.

10. That your orators by the exercise of no reasonable amount of diligence could have discovered the filing, publication or establishment of said newly reduced rates so permitted as aforesaid by said Interstate Commerce Commission to become effective, and since such discovery have acted diligently in the preparation and filing of said motions for further hearing in said proceeding before said Interstate Commerce Commission and in the preparation and filing of this supplemental bill of complaint herein.

11. And your orators aver (as at all times in these proceedings they have averred) that said Interstate Commerce [fol. 667] Commission is without the power, authority or jurisdiction to prescribed intrastate rates for the transportation of logs in intrastate commerce in Florida in said proceeding, and that said Interstate Commerce Commission has not made and cannot upon the record in said proceedings make the findings which would justify the invasion of the domain of the State of Florida, and that said Interstate Commerce Commission has not justified and could not upon said record justify the invasion of the domain of the State of Florida to fix intrastate rates, and that the action of said Interstate Commerce Commission in attempting so to do was and is arbitrary and unlawful; that the matters and things hereinabove set forth constitute additional evidence further demonstrating that the said order of the said Interstate Commerce Commission

in invading the domain of the State of Florida as aforesaid was not and is not justified and was and is arbitrary, unreasonable, beyond the power of said Interstate Commerce Commission, and wholly invalid and unlawful.

12. That the Florida intrastate rates above set forth have been prescribed by the said Interstate Commerce Commission on the sole ground that such rates are necessary to remove a revenue burden on interstate commerce, and in order that such intrastate rates might pay their fair proportionate share towards the maintenance of an adequate national transportation system; that for said Interstate Commerce Commission to invade the domain of [fol. 668] the State and prescribe intrastate rates to remove a burden upon interstate commerce while permitting the application of such lower rates upon interstate commerce constitutes an unwarranted exercise of Federal power to the preference of interstate commerce and to the unjust and undue prejudice of intrastate commerce; and that so long as the said Interstate Commerce Commission's order in this proceeding remains in force and effect the State authorities to whom primary jurisdiction over intrastate rates is committed are powerless to remove the discrimination above described against intrastate commerce.

Wherefore, your Petitioners respectfully pray as follows:

A. That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, and Atlantic Coast Line Railroad Company with service thereof and of this supplemental bill of complaint in the manner prescribed by statute in such cases made and provided.

B. That upon the filing of this supplemental bill of complaint the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge; that this Honorable Court will examine the evidence taken before said Interstate Commerce Commission and determine for itself, independently of any determinations or findings of said Interstate Commerce Commission, whether or not such facts warranting such findings, which are prerequisite [fol. 669] to the jurisdiction of the Interstate Commerce Commission to invade the domain of the State of Florida, have in fact been made to clearly appear by the evidence.

C. That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and are null and void and that said report and order, as amended, be set aside and annulled.

D. That this Court will allow a temporary stay or suspension of the operation of the said order of the Interstate Commerce Commission pending the application for the injunctions herein sought.

E. That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until the further order of this Court.

F. That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission, and permanently enjoining the enforcement thereof.

[fol. 670] G. That your petitioners may have such other and further relief in the premises as to this Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

H. P. Adair, C. G. Ashby, Attorneys for Wilson Cypress Company. J. V. Norman, Attorney for Wilson Lumber Company of Florida. A. G. Gutheim, Attorney for Plaintiffs.

[fol. 671] *Duly sworn to by C. R. MacPherson. Jurat omitted in printing.*

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[fols. 672-690] Exhibit "A" Omitted, printed side page 418, ante.

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[fol. 691] Exhibit "B" Omitted, printed side page 437, ante.

[fol. 692] EXHIBIT "C" TO SUPPLEMENTAL BILL

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant

PETITION ON BEHALF OF WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA FOR FURTHER HEARING IN, AND RECONSIDERATION OF, THE ABOVE-ENTITLED PROCEEDING, OF THE GROUND OF ADDITIONAL NEWLY DISCOVERED EVIDENCE

Come now Wilson Cypress Company and Wilson Lumber Company of Florida, interveners herein, referred to in the report of this Commission as "the Florida interveners", and respectfully petition the Commission to grant a further hearing in, and to give further reconsideration to, the above-entitled proceeding; and in support of said petition respectfully show:

I

That by its report and final order in this proceeding the Commission prescribed minimum rates per one hundred [fol. 693] pounds on Florida intrastate log traffic, minimum carload weight 40,000 pounds, as follows:

| Distances | Rates cents |
|---|---|
| 10 miles and under | 2.5 |
| 20 miles and over 10 | 3.0 |
| 30 miles and over 20 | 3.5 |
| 40 miles and over 30 | 4.0 |
| 55 miles and over 40 | 4.5 |
| 70 miles and over 55 | 5.0 |
| 85 miles and over 70 | 5.5 |
| 100 miles and over 85 | 6.0 |
| 120 miles and over 100 | 6.5 |
| 140 miles and over 120 | 7.0 |
| 160 miles and over 140 | 7.5 |
| 170 miles and over 160 | 8.0 |

II

That said Florida intrastate log rates were prescribed by the Commission to remove an "unjust discrimination against interstate commerce from a revenue standpoint", and for no other reason (Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 186 I. C. C. 157, 190); and that in reaching its conclusions and in prescribing said rates the Commission relied upon and gave consideration to certain comparisons of the presently effective Florida intrastate log rates (the so-called Cummer scale), with other scales of rates effective in southeastern territory (Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., supra. pp. 193-194).

[fol. 694]

III

That heretofore, on October 5, 1932, these interveners did file with the Commission their petition for further hearing in and reconsideration of the above-entitled proceeding on the ground of newly discovered evidence, and therein recited in substance that since the close of the hearings theretofore had in this proceeding certain of the carriers in southern territory had filed reduced rates applicable to the transportation of logs in that territory, and that more particularly, among such carriers, were Mobile & Ohio Railroad, Illinois Central Railroad, Yazoo & Mississippi Valley Railroad, Nashville, Chattanooga and St. Louis Railway, Southern Railway, and St. Louis-San Francisco Railway; and that such reduced rates were generally upon the following basis:

| | Rate per car regardless of weight |
|---|---|
| 25 miles and less | $12.00 (note 1) |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 20.00 (note 2) |

Note 1. Sou. Ry. rate is $12.50 per car.

Note 2. St. L.-S. F. Ry. rate is $22.50 per car.

It was further alleged in said petition that said reduced rates were generally applicable upon the lines of carriers [fol. 695] located in the same territorial rate group as is the defendant herein, the Atlantic Coast Line Railroad Company, i. e., in the Southern Group; that similar reduced

rates applicable to the transportation of logs in southwestern territory had then recently been published and filed with this Commission, and permitted to become effective; and that such reduced rates, so filed, were generally upon almost exactly the same level as the so-called Cummer scale of rates on logs applicable intrastate in Florida; and that measured by such recently published rates on logs in Southern and in Southwestern territory, the scale prescribed by the Interstate Commerce Commission for intrastate application in Florida as set forth in Paragraph I hereof, is unjustly and unreasonably high and extortionate.

That subsequently, and pursuant to the prayer of the Florida interveners in said petition, the Commission reopened the proceeding, held further hearing therein at Jacksonville, Florida on November 21-22, 1932, and has now rendered its further report therein dated January 9, 1933, and affirmed the finding in the prior report on further hearing, 186 I. C. C. 157.

IV

That since the filing of said petition for further hearing in, and reconsideration of, this proceeding by the Florida interveners on October 5, 1932, and since said further hear- [fol. 696] ing held in Jacksonville, Florida on November 21-22, 1932, carriers in Southern territory and thus in the same territorial rate group as is the Atlantic Coast Line Railroad Company defendant herein, have filed additional reduced rates applicable to the transportation of logs over their lines in Southern territory; and that such rates are to the effect, and are found in tariffs as described below:

Atlantic Coast Line Railroad Company in its Lumber Transit Tariff I. C. C. No. 2745, filed to become effective December 10, 1932, (but a few days, it may be noted, after the close of the further hearing in this proceeding in Jacksonville, Fla., on November 21-22, 1932), and in Rule 127 of said tariff, has published net transit rates on logs to Montgomery, Ala., as follows:

| | Cents per 100 lbs. |
|---|---|
| 100 miles and under | 2.5 |
| 125 miles and over 100 miles | 3.5 |
| 175 miles and over 125 miles | 4.5 |

And said Atlantic Coast Line Railroad Company, after the last hearing herein, by Supplement No. 1 to said tariff, effective December 10, 1932, published rates on lumber, poles, piling and forest products not otherwise specified, to Charleston, S. C., from the following points of origin as [fol. 697] follows (the distances likewise being set forth in the following tabulation):

| From | To | Distance miles | Rate (in cents) per hundred pounds |
|---|---|---|---|
| Gourdin, S. C. | Charleston, S. C. | 51 | 1 |
| Florence to Lanes, S. C. | Charleston, S. C. | 102 | 1½ |
| Sumter, S. C. | Charleston, S. C. | 94 | 1½ |
| Gamble to Carpon, S. C. | Charleston, S. C. | 56 | 1½ |
| Dillon to Florence Transfer, S. C. | Charleston, S. C. | 132 | 2½ |
| Mullins to Evansdale, S. C. | Charleston, S. C. | 130 | 2½ |
| Darlington to Haynesworth, S. C. | Charleston, S. C. | 110 | 2½ |
| Berry to Clio, S. C. | Charleston, S. C. | 128 | 2½ |
| Currans to Nix | Charleston, S. C. | 104 | 2½ |
| Ebenezer to Rytten-burg | Charleston, S. C. | 95 | 2½ |
| Bennettsville to Lides | Charleston, S. C. | 134 | 3 |
| Maxie to Noah | Charleston, S. C. | 138 | 3 |
| Wisacky to Lucknow | Charleston, S. C. | 115 | 3 |
| Floyd to Perkins | Charleston, S. C. | 116 | 3 |
| Auburn and Hartsville | Charleston, S. C. | 122 | 3 |

and that all of said rates aforesaid are about one-half the rates prescribed by this Commission for intrastate appli- [fol. 698] cation on logs over the lines of the same railroad, Atlantic Coast Line Railroad Company in Florida, as set forth in Paragraph I hereof.

Central of Georgia Railway Company, in its Tariff I. C. C. No. 2851, effective September 27, 1932, names rates

for the transportation of logs from stations on the Central of Georgia Railway to Augusta, and Waynesboro, Ga., for transit, as follows:

| | Cents per 100 lbs. |
|---|---|
| 50 miles and under | 2.5 |
| 75 miles and over 50 miles | 3.0 |
| 100 miles and over 75 miles | 3.5 |

and that such rates are only about one-half of the rates prescribed for the transportation of logs intrastate within Florida by this Commission as set forth in Paragraph I hereof.

Louisville & Nashville Railroad Co. Tariff I. C. C. No. 16022, Supplement 19, effective January 27, 1933, names rates applicable in connection with the transportation of logs to transit points on the Louisville & Nashville Railroad when originating at Louisville & Nashville Railroad stations, and when movement to transit points is solely via the L. & N. Railroad, as follows:

| | Per Car regardless of weight |
|---|---|
| 25 miles and less | $12.00 |
| 50 miles and over 25 | 15.00 |
| 75 miles and over 50 | 17.50 |
| 100 miles and over 75 | 20.00 |

[fol. 699] and said tariff likewise names rates for the transportation of logs over said railroad from Louisville, Kentucky, to Knoxville, Tennessee, a distance of 277 miles, of $29.50 per car. That said rates, based upon the average carloading that may reasonably be expected of such logs, as already shown herein, are substantially the same as the rates of the Cummer scale in Florida, and very substantially less than the scale prescribed by this Commission for application on logs on the lines of the Atlantic Coast Line Railroad Company wholly within Florida.

Furthermore, these interveners respectfully allege that the Louisville & Nashville Railroad Company is controlled by defendant Atlantic Coast Line Railroad Company.

Savannah & Atlanta Railway, I. C. C. No. 115, effective July 14, 1930 (and which has only since the last hearing come to the attention of these interveners) names transit rates from all stations on the Savannah & Atlanta Railway to Warrenton, Sardis, and Newington, Georgia, on logs as follows:

| | Cents per 100 lbs. |
|---|---|
| 25 miles and under | 2.5 |
| 50 miles and over 25 miles | 3.0 |
| 75 miles and over 50 miles | 3.5 |

and that such rates are materially lower than the rates prescribed by this Commission to apply on logs over the Atlantic Coast Line Railroad Company in Florida.

[fol. 700] Southern Railway Supplement 7 to Tariff I. C. C. 10425, effective December 31, 1932, to expire December 3, 1933, provides the following rates on logs from C. N. A. & T. P. stations to Knoxville, Tenn., from Southern Railway stations to Dayton, Tenn., from Southern Railway stations to Fayette, Ala:

| | Per Car regardless of weight |
|---|---|
| 25 miles and under | $12.50 |
| 50 miles and over 25 miles | 15.00 |
| 75 miles and over 50 miles | 17.50 |
| 100 miles and over 75 miles | 20.00 |

and that said rates so published by said Southern Railway Company, based on the loading reasonably to be expected, are almost exactly on the level of the Cummer scale and substantially less than the scale prescribed by this Commission for application over the lines of the Atlantic Coast Line Railroad Company within Florida.

Atlanta, Birmingham & Coast Railroad Company, in its tariff No. 18, effective October 10, 1927 (and which has only since the last hearing herein come to the attention of these interveners) publish a scale for the transportation of logs, applicable at Thomasville and Tifton, Georgia, which is as follows:

| | Cents per 100 lbs. |
|---|---|
| 25 miles and under | .5 |
| 50 miles and over 25 miles | 1.5 |

and that such rates are about one-half of the rates prescribed by this Commission for application to the transportation of logs over the lines of the Atlantic Coast Line Railroad Company in Florida.

[fol. 701] Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 8, effective August 10, 1932 (and which has only since the last hearing

come to the attention of these interveners) published a scale of rates for the transportation of ash, oak, cypress and poplar logs from stations between and including Branchville, Virginia, and Littleton, North Carolina, to Boykins, Virginia, and from stations between and including Severn, North Carolina, and Lewiston, North Carolina, to Boykins, Virginia, which is $2.50 per thousand feet, and requires a minimum carload of 4,000 feet. The distance from Littleton to Boykins is 44.7 miles, and the distance from Lewiston to Boykins is 35 miles, and the record shows that these logs weigh from 10 to 14 pounds per foot (tr. 1585-1586). Said rate is therefore approximately the same as the Cummer scale for said distances, and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 9, effective December 11, 1932 (after the last hearing herein), published a scale of rates for the transportation of gum logs from Fitz Siding, N. C. to Norfolk, Virginia, a distance of 61 miles, which is 3½ cents per 100 pounds, and requires a minimum carload of 80,000 pounds. Said rate is approximately the same as the Cummer scale for said distance, and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

[fol. 702] Norfolk and Southern Railroad Company, in its tariff, I. C. C. No. A-760, effective May 15, 1931 (and which has only since the last hearing herein come to the attention of these interveners) provides a scale of rates for the transportation of lumber, piles, and other forest products to Norfolk, Virginia, which is as follows:

| | Cents per 100 lbs. |
|---|---|
| 50 miles and under | 3 |
| 100 miles and over 50 miles | 4 |
| 150 miles and over 100 miles | 5 |
| 200 miles and over 150 miles | 6 |

and said rates are materially less than the rates prescribed by this Commission for application on the lines of the Atlantic Coast Line Railroad Company within Florida.

Georgia & Florida Railroad in its Tariff I. C. C. No. 558, effective May 6, 1931, provides transit rates on logs

from stations on its line to stations on its line on the following net basis:

| | Cents per 100 lbs. |
|---|---|
| 50 miles and under | 2.5 |
| 75 miles and over 50 miles | 3.0 |
| 100 miles and over 75 miles | 3.5 |
| 160 miles and over 100 miles | 4.0 |
| 200 miles and over 160 miles | 4.5 |

and that such rates are but slightly more than one-half the rates prescribed by this Commission for application to the [fol. 703] transportation of logs over the lines of the Atlantic Coast Line Railroad Company in Florida.

V

That insofar as said recently reduced rates on logs enumerated as above, and other reduced rates on logs, already of evidence in this proceeding, are applicable only to the transportation of logs to transit points, these interveners respectfully allege that the movement of logs on the Atlantic Coast Line in Florida is in everyday practice a transit movement; that in the hearing at Jacksonville, Fla., on November 21-22, 1932, these interveners offered so to prove and said proof was rejected by the Examiner (see Tr. 1530-1532, 1605 and 1784); and that upon further hearing, if the same be granted, they will again offer to prove that the rates prescribed by this Commission for application on logs over the lines of the Atlantic Coast Line Railroad Company in Florida are in practice transit rates, which assure to the Atlantic Coast Line substantially 100 per cent of the outbound movement of the product of the logs from the transit point.

VI

That carriers operating in Southwestern territory have recently published further reductions in the rates for the transportation of logs on their lines to the figures as set forth in Paragraph III hereof, and in some instances have [fol. 704] extended the expiration date of such rates theretofore named; and that among such may be enumerated Missouri Pacific Railroad Tariff I. C. C. No. A 8212, Supplement No. 5, published to expire December 31, 1933, and

T. & N. O. R. R. Supplement No. 1 to I. C. C. Tariff No. Texas 213, effective November 11, 1932.

VII

That the Florida intrastate rates above set forth have been prescribed by this Commission on the sole ground that such rates are necessary to remove a revenue burden on interstate commerce, and in order that such intrastate rates might pay their fair proportionate share towards the maintenance of an adequate national transportation system; that for this Commission to invade the domain of the state and prescribe intrastate rates to remove a burden upon interstate commerce while permitting the application of such lower rates upon interstate commerce constitutes an unwarranted exercise of Federal power to the preference of interstate commerce and to the unjust and undue prejudice of intrastate commerce; and that so long as the Commission's order in this proceeding remains in force and effect the State authorities to whom primary jurisdiction over intrastate rates is committed are powerless to remove the discrimination above described against intrastate commerce.

VIII

That the report and order of this Commission herein prescribing intrastate rates in Florida relate to and are [fol. 705] based upon conditions and circumstances all of which are far different from those existing at present, and form no proper basis for any finding or conclusion as to the amount of revenue which the carrier can now reasonably be expected to derive under the Florida rates so prescribed, and the findings actually made are themselves expressly inapplicable to present circumstances and conditions and are improper findings of fact upon which to support said order.

IX

That the matters and things set forth in the report of this Commission, including the findings therein contained, are not findings, or any of them, or the basis for the findings or any of them, which the Supreme Court has said are necessary to justify this Commission's order herein, and such findings as are made are not the findings which the Supreme Court has said are necessary.

X

And these petitioners hereby re-ass
and every of the matters and things he
affirmed in the several petitions for
sideration heretofore filed herein by
[fol. 706] Wherefore, your petition
that these proceedings be reopened fo
consideration; that pending such fur
sideration the outstanding order her
to be applied for the transportation
Florida be set aside, or that the effe
postponed; that the Commission ente
or orders as will remove or permit
of the State of Florida to remove t
tion in favor of interstate commerce
dice to intrastate commerce resultin
order of this Commission; and that
such further order or orders in the pr
somable and just.

Respectfully submitted, Wilso
Wilson Lumber Company of
man, August G. Gutheim, Ch
Adair, C. D. Ashby, Attorne

Washington, D. C., February 4th,

(Here follows Exhibit D, si

assert and reaffirm each
heretofore asserted and
or rehearing and recon-
by these petitioners.
oners respectfully pray
for further hearing and
urther hearing and con-
herein prescribing rates
on of logs intrastate in
ffective date thereof be
nter such further order
it the State authorities
the unjust discrimina-
e and the unjust preju-
ing from the aforesaid
t the Commission enter
premises as may be rea-

son Cypress Company,
of Florida, by J. V. Nor-
Chas. E. Cotterill, H. P.
neys.

, 1933.

side folio 707)

[fol. 708] [File endorsement omitted]

[fol. 709] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the supplemental bill filed therein against it answers and says:

I

United States admits for the purposes of this suit that the allegations of the opening paragraph and paragraph 1 of the supplemental bill are true, with this exception: that it denies the conclusion in said paragraph 1 that "the said Interstate Commerce Commission attempted to invade the domain of the State of Florida and to dis-establish the scale of lawful rates in force and effect for the transportation of logs" in intrastate commerce in Florida.

[fol. 710] II

Answering paragraph 2 of the supplemental bill, United States admits that plaintiffs filed with said Commission their motion to set aside the Commission's order and for further hearing by the Commission, and that said motion contained averments substantially as set forth in said paragraph 2.

But United States denies that the mere fact that said "newly reduced rates were permitted" by said Commission to be filed and to become effective constitutes, or may be construed as constituting, a finding or determination by said Commission that said rates are just, reasonable or lawful in any respect whatever; and alleges that said Commission has not found or determined that said rates are reasonable or otherwise lawful.

III

United States admits that the allegations contained in paragraphs 3 and 4 of the supplemental bill are true.

IV

Answering paragraph 5 of the supplemental bill, United States admits that on November 21 and 22, 1932, said Commission held further hearing in said proceedings, and that at such hearing numerous tariffs publishing said "newly reduced rates" mentioned in said paragraph 5 were introduced in evidence; but United States denies that said paragraph 5 contains a fair, accurate, full or complete statement of all the evidence introduced at said hearing, and for a full, complete and accurate summary of all the evidence [fol. 711] introduced and received at said hearing the Court is respectfully referred to the statements made and contained in the Commission's report, annexed as Exhibit A to the supplemental bill.

V

Answering paragraph 6 of the supplemental bill, United States admits that the allegations therein are true, and that Exhibits A, and B, mentioned therein, are true copies of said report and order of the Commission issued January 9, 1933.

Further and affirmatively answering the allegations of said paragraph, United States alleges that in its said report of January 9, 1933 (Exhibit A, sheets 15 and 16) said Commission found, among other things, that:

The record warrants the conclusion that truck competition and, to a lesser degree carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and

trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

VI

Answering paragraph 7 of the supplemental bill, United [fol. 712] States admits that on February 8, 1933, plaintiffs filed with said Commission their petition for further hearing; that Exhibit C to the supplemental bill is a true copy thereof; and that said petition contained allegations substantially as set forth and described in said paragraph 7. But United States denies that the mere fact that said Commission has permitted to be filed and to become effective the "newly reduced rates" referred to in said paragraph, constitutes or may be construed as constituting, a finding or determination by the Commission that said rates are just, reasonable or lawful in any respect whatsoever.

VII

United States admits that the allegations of paragraph 8 of the supplemental bill are true.

VIII

Answering so much of the first sentence of paragraph 9 of the supplemental bill as re-avers the allegations of the original bill of complaint in this cause, United States respectfully refers to, repeats and adopts as a part hereof, its answer heretofore filed to said original bill.

Answering subdivisions (a) to (i), inclusive, of said paragraph 9, United States denies that the matters, things and conclusions therein set forth are either relevant, competent or material to any issue which may properly be raised in this proceeding or considered by this Court in determining whether said order is lawful; and United States alleges that the allegations of said subdivision (a) to (i), inclusive, are

[fol. 713] purely argumentative, that the matters therein set forth, even if true, are beyond the jurisdiction of this Court to consider, and are for consideration solely by said Commission in its exclusive jurisdiction as an administrative body.

IX

United States disclaims any knowledge whatever of the allegations contained in paragraph 10 of the supplemental bill, and as to them it neither admits nor denies.

X

United States denies the allegations contained in paragraph 11 of the supplemental bill.

XI

Answering paragraph 12 of the supplemental bill, United States admits that said order of the Commission requires the prescribed increases in the Florida intrastate rates on logs described in the Commission's report for the purpose of removing an unjust discrimination against interstate commerce; but United States denies all the remaining allegations of said paragraph 12, and each and every inference sought thereby to be created, including the inference that the mere fact that said Commission has permitted new and reduced rates on logs to be filed and published constitutes a finding or determination that said rates are just and reasonable or otherwise lawful, and denies the further inference that such permission "constitutes an unwarranted exercise of Federal power to the preference of interstate commerce, and to the unjust and undue prejudice of intrastate commerce."

[fol. 714] Except as herein expressly admitted, United States denies each and every allegation contained in the supplemental bill and in the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the supplemental bill of complaint, United States prays that the relief sought be denied and that both the supplemental bill of complaint and the original petition in said cause be dismissed for want of equity, with costs to the plaintiffs, and that it have the bene-

fit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 715] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

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[fol. 716] In United States District Court

No. 691

[Title omitted]

Answer of Interstate Commerce Commission to Supplemental Bill of Complaint—Feb. 24, 1933

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' supplemental bill of complaint contained, for answer thereunto, or unto so much of such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph 1 of the supplemental bill of complaint, the Commission admits for the purpose of this suit, that the allegations therein contained are true with these exceptions: (1) That by its order of July 5, 1932, as amended July 28, 1932, in the proceeding entitled Georgia [fol. 717] Public Service Commission v. Atlantic Coast Line Railroad Company, Docket No. 18364, the Commission did not attempt to invade the domain of the State of Florida, as alleged, but, on the contrary, acted under the authority conferred upon it by paragraphs (3) and (4) of Section 13 of the Interstate Commerce Act; (2) that in requiring by said order an increase in the Florida intrastate rates of the Atlantic Coast Line Railroad Company, a common carrier engaged in interstate commerce (as well as in intrastate commerce) and therefore subject to the provisions of the Interstate Commerce Act and to the jur-

isdiction of the Commission, for the purpose of removing the unjust discrimination against interstate commerce, found by the Commission after full hearing to exist, the Commission did not require the disestablishment of a lawful scale of rates, as alleged, but, on the contrary, required increases in a scale of intrastate rates (the so-called Cummer scale) found by the Commission to be unlawful, in that said scale caused unjust discrimination against interstate commerce, which is forbidden and declared to be unlawful by section 13 (4) of the Interstate Commerce Act.

II

Answering paragraphs 2 to 6, both inclusive, of the supplemental bill of complaint, the Commission admits that after the hearing before this court in this cause, held at Atlanta, Ga., September 14, 1932, and while the cause was pending decision in this court, the plaintiffs, on October 6, 1932, filed a petition with the Commission for further hearing in the aforesaid proceeding, setting forth that subsequently to the issuance of the Commission's report and order of July 5, 1932, certain rail carriers in southern and [fol. 718] southwestern territories, other than the Atlantic Coast Line Railroad Company, had reduced certain of their logs rates to substantially the same basis as the aforesaid Cummer scale applicable intrastate on the lines of the Atlantic Coast Line Railroad Company in Florida; that upon consideration of said petition, the Commission, by order dated October 21, 1932, suspended the operation of its order of July 5, 1932, as amended, until the further order of the Commission, and reopened the proceeding for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates of defendant Atlantic Coast Line Railroad Company; that such further hearing was held at Jacksonville, Fla., November 21 and 22, 1932, and thereafter, on January 9, 1933, the Commission issued a further report, styled "Second Report of the Commission on Further Hearing," and with said report issued an order which vacated and set aside, as of February 11, 1933, its order of October 21, 1932, sus-

pending the operation of the order of July 5, 1932, until the further order of the Commission, and directed that after February 11, 1933, said order of July 5, 1932, should remain in full force and effect until the further order of the Commission; that a typewritten copy of said Second Report of the Commission on Further Hearing, issued January 9, 1933, together with a copy of the order of the same date issued with and as part of said report, is attached to the supplemental bill of complaint marked [fol. 719] "Exhibit A"; that said report is published at 190 I. C. C. 588, and the Commission refers the court to said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the further proceedings before the Commission upon which said report and order were and are based; that at the further hearing in said reopened proceeding a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration and at said hearing questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of January 9, 1933; that said report and order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and upon the evidence submitted at the original hearings and upon the evidence submitted at the first rehearing and as shown in and by said reports of July 5, 1932 (186 I. C. C. 157) and January 9, 1933 (190 I. C. C. 588), the Commission made the findings and stated the conclusions upon which said order of January 9, 1933, is based.

III

Further answering paragraphs 2 to 6, both inclusive, of the supplemental bill of complaint, the Commission alleges that the findings and conclusions in said report of January 9, 1933, were and are, and that each of them [fol. 720] was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

IV

Further answering said paragraphs 2 to 6, both inclusive, the Commission alleges that the newly-reduced log rates of certain rail carriers, referred to in said paragraphs, were established voluntarily by those carriers and were made effective in the manner provided by section 6 of the Interstate Commerce Act, that is, by publication in the form of printed tariff schedules, and by the filing of the tariff schedules with the Commission; that while said tariff schedules were subject to suspension by the Commission under the authority of section 15 (7) of the Interstate Commerce Act, there was no protest lodged with the Commission against the going into effect of said rates and there was no request made to the Commission for the suspension of said schedules; that in the absence of protest and request for suspension, said schedules were placed in the tariff files and became effective as of course in the routine manner; that no provision of the law requires that the permission of the Commission be obtained prior to the filing of tariff schedules naming new rates or charges, and the filing of the aforesaid schedules and the becoming effective of the rates named therein did not constitute permission to charge said rates or constitute approval of them by the Commission, and the Commission has neither sanctioned nor approved said rates.

V

Further answering paragraph 6 of the bill of complaint, the Commission admits and alleges that, at the request of [fol. 721] counsel for plaintiffs herein, it postponed the effective date of its order of January 9, 1933, from February 11, 1933, to February 25, 1933, that is to say, on January 19, 1933, it entered an order amending its order of January 9, 1933, so as to vacate and set aside its order of October 21, 1932, as of February 25, 1933, instead of February 11, 1933. A copy of said order of January 19, 1933, is attached to and made a part of the supplemental bill of complaint as Exhibit B.

VI

Answering paragraphs 7 and 8 of the supplemental bill of complaint, the Commission admits that on February 8, 1933, plaintiffs herein filed with the Commission another petition for rehearing in the aforesaid proceeding, a copy

of which petition is attached to the supplemental bill of complaint, marked "Exhibit C", and that by order dated February 13, 1933, the Commission denied said petition; and the Commission alleges that on February 14, 1933, the Atlantic Coast Line Railroad Company, defendant in said proceeding, filed an answer to said petition, a copy of which answer, marked Exhibit No. 1, is attached hereto and made a part hereof.

VII

Further answering paragraph 7 of the supplemental bill of complaint, the Commission admits that certain of the tariff schedules specified in said paragraph have been filed with it since the last hearings in the aforesaid proceeding held at Jacksonville, Fla., on November 21 and 22, 1932, but denies that all of said schedules have been filed and made effective subsequently to said hearing, denies that all of said schedules name rates on logs, and denies that said [fol. 722] paragraph 7 fully, accurately, and correctly describes or states the application of said rates according to the terms of said tariff schedules.

Further answering said paragraph 7 the Commission alleges as follows:

Louisville & Nashville Railroad Tariff I. C. C. No. 16022, supplement 19: This tariff is a "Local and Joint Freight Tariff of Transit Privileges on Forest Products, Carloads, at points on Louisville and Nashville Railroad Company," naming the rates on logs alleged in said paragraph 7, but said rates are transit rates subject to the numerous rules and regulations specified therein governing the transit privilege, and the reduced rates published in supplement 19 thereto, effective January 27, 1933, by the terms of that supplement, expire with August 6, 1933, unless sooner canceled, changed or extended.

Atlantic Coast Line Tariff I. C. C. No. B-2745 (Rule 127): This is a lumber transit tariff, effective December 10, 1932, and the rates alleged in said paragraph 7 are net transit rates to be applied on inbound movements to Montgomery, Ala., published in Rule 127, page 15, of said tariff and are applicable only in connection with certain other rates published in said tariff and where the item publishing said rates makes specific reference to Rule 127. These rates

are "back-haul" rates applying on lumber and certain other forest products, not including logs, which originate at certain points on Atlantic Coast Line east of Montgomery, Ala., shipped to Montgomery and after creosoting or dressing, or otherwise treated, are reshipped eastbound in a back-haul movement.

[fol. 723] Atlantic Coast Line Tariff I. C. C. No. B-2745, Supplement No. 1: This supplement, effective January 10, 1933, publishes charges ranging from 1 to 3 cents per 100 pounds as extra charges for back or out-of-route hauls in addition to the through rates and stoppage charges published in tariffs lawfully on file with the Commission when transit privileges are accorded at Charleston, S. C. Certain of these out-of-line charges, viz., those ranging from 1 to 2.5 cents per 100 pounds, applicable upon traffic originating at certain points and destined to certain points, were first established August 29, 1932, in Supplement 23 to Atlantic Coast Line Tariff I. C. C. B-2639, while those of 3 cents per 100 pounds, applicable upon traffic originating at other points, became effective December 22, 1932. All expire with August 29, 1933, unless sooner canceled, changed or extended, and Item No. 650-A of said Supplement 1, publishing these charges, expressly provides that "these privileges are published to meet motor truck competition." These rates do not apply on logs and apply only in connection with the "milling, creosoting, storing, trimming and/or dressing in transit of cross arms, crossties, lumber, piling, poles and timber, N, O. S."

Central of Georgia Railway Tariff I. C. C. No. 2851: This tariff, effective interstate September 27, 1932 and intrastate August 26, 1932, names the reduced rates on logs specified in said paragraph 7, but said rates are transit rates subject to the numerous provisions of the tariff governing the transit privilege. According to its terms this tariff "expires September 26, 1933, unless sooner cancelled, changed or extended," and said tariff expressly states that "these rates are issued to meet truck competition."

[fol. 724] Norfolk Southern Railroad Tariff I. C. C. No. A-760: This is a "Local Freight Tariff governing Milling and Creosoting of Lumber and Articles Taking Same Rates in Transit at Norfolk, Va.," effective May 15, 1931. The transit rates published in this tariff do not apply on logs.

Georgia & Florida Railroad Tariff I. C. C. No. 558: This tariff became effective May 6, 1931, and the transit rates on logs "from stations on Georgia & Florida Railroad to mill points on Georgia & Florida R. R. direct," published in Item No. 3 (a) thereof, have been in effect in preceding tariffs since September 20, 1924.

Savannah & Atlanta Railway Tariff I. C. C. No. 115: This tariff became effective July 14, 1930, and the transit rates on logs "from all stations on Savannah and Atlanta Railway to East Warrenton, Sardis and Newington, Ga.," published in Item No. 10 thereof, have been in effect in preceding tariffs since October 22, 1924.

Seaboard Air Line Railway Tariff I. C. C. No. A-7528, Supplement 8: This supplement, effective August 10, 1932, names a rate of $2.50 per 1,000 ft. on ash, oak, cypress and poplar logs to Boykins, Va., from points in northern North Carolina on the Lewiston Branch extending from Boykins, Va., to Lewiston, N. C., a total distance of 35 miles, and to Boykins, Va., from points on the Portsmouth Division between Branchville, Va., and Littleton, N. C., the distance from Branchville to Boykins being approximately 3 miles and from Littleton to Boykins approximately 45 miles. This rate, according to the terms of said supplement, was "established to meet motor truck competition," and its application from points on the Lewiston Branch expires [fol. 725] June 30, 1933, and from points on the Portsmouth Division expires August 10, 1933, unless sooner cancelled, changed or extended.

Seaboard Air Line Railway Tariff I. C. C. No. A-7528, Supplement 9: This supplement, effective December 11, 1932, names a rate of 3½ cents per 100 pounds on gum logs, carloads, minimum weight 80,000 pounds, from Fitz Siding, N. C., to Norfolk, Portsmouth and Suffolk, Va., distances of approximately 61, 60, and 44 miles, respectively. This supplement expressly provides that said rate is "established to meet motor truck competition," and that "rate expires with December 11, 1933, unless sooner cancelled, changed or extended."

Southern Railway Tariff I. C. C. No. A-10425, Supplement 7: This supplement names the rates on logs alleged in said paragraph 7 from Southern Railway stations to Knoxville, Tenn., and Fayette, Ala., and from Cincinnati, New Orleans & Texas Pacific Railway stations to Dayton, Tenn., effective on Tennessee intrastate traffic December 3,

1932, and on interstate traffic December 31, 1932. Said rates, according to the terms of said supplement, were "issued to meet motor truck competition and will expire with December 3, 1933, unless sooner cancelled, changed or extended."

The Commission further alleges that none of the aforementioned transit rates is applicable to or collectible upon the inbound shipment to the transit point at the time of the movement of the inbound shipment to the transit point, but the full tariff rate applicable upon the inbound movement is collected, and these transit rates are applied only if and when an outbound shipment from the transit point moves and then only if all rules and regulations governing the transit privilege as specified in the applicable tariff are complied with.

[fol. 726] VI

Answering paragraphs 9 to 12, both inclusive, of the supplemental bill of complaint, the Commission denies that said order of July 5, 1932, is unlawful for the reasons, or for any of the reasons, set forth in said paragraphs.

Further answering said paragraphs, the Commission alleges that in making said Second Report on Further Hearing, issued January 9, 1933, and the said order of January 9, 1933, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel.

Further answering said paragraph 9, and particularly sub-paragraph (f) thereof, the Commission specifically denies that the aforesaid Cummer scale of rates is in practical operation and effect tantamount to a transit scale, denies that all or substantially all of the outbound products manufactured by the several shippers receiving logs under the Cummer scale move over the lines of the Atlantic Coast Line Railroad Company under and by virtue of the terms of service contracts exacted from such shippers in the case of train-load shipments, or by virtue of the location of the mills of many if not most of such other shippers as receive logs under the said Cummer scale. The Commission alleges that said Cummer scale of rates is a scale of local rates and that those rates are in no sense transit rates, that they are not published as transit rates

and there are no rules, regulations or conditions published in any tariffs of the Atlantic Coast Line Railroad Company governing transit privileges in connection with such rates.

[fol. 727] The Commission further alleges that said orders of July 5, 1932, and January 9, 1933, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the supplemental bill of complaint.

VII

Except as herein expressly admitted the Commission denies the truth of each of and all the allegations contained in the supplemental bill of complaint in so far as they conflict either with the allegations herein or with the statements or conclusions of fact included in said reports and orders of July 5, 1932, and January 9, 1933, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that the bill of complaint and supplemental bill of complaint herein be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel of Counsel.

[fol. 728] *Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.*

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[fol. 729] [File endorsement omitted]

[fol. 730] In United States District Court

No. 691

[Title omitted]

Motion of Atlantic Coast Line Railroad Company to Deny Motion of Plaintiffs to File Supplemental Bill of Complaint—Filed Feb. 24, 1931

Now comes Atlantic Coast Line Railroad Company and respectfully moves this court to deny the motion of Wilson Cypress Company and Wilson Lumber Company of Florida to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

1

The additional matters set up in the supplemental bill are not sufficient to justify this court in granting the relief prayed, for that:

(a) The supplemental bill which plaintiffs propose filing shows that all the matters and things therein mentioned have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932, for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the [fol. 731] Interstate Commerce Commission has found that the matters and things set up in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its docket No. 18364.

(b) That the record in this case shows that a motion to the Interstate Commerce Commission was filed by the plaintiffs herein on August 10, 1932, to postpone the effective date of the Commission's order entered July 5, 1932. Said motion was denied by said Commission by its order entered August 13, 1932; and that then a motion by the plaintiffs herein was filed with the Commission for further hearing and reconsideration of said report and order of July 5, 1932, on August 17, 1932, and denied by order of the Commission entered August 25, 1932.

(c) The original bill in this cause was filed by the plaintiffs herein in this court on September 9, 1932. The same came on for hearing on September 14, 1932; and after said hearing, and on October 21, 1932, the order of the Interstate Commission of July 5, 1932, as amended July 28, 1932, was suspended by the Commission and the proceedings thereunder reopened for the purpose of further hearing and for the purpose of "receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate logs rates of defendant."

[fol. 732] (d) That the said reopened hearing was had on November 21-22, 1932; and the Commission, on full and ample evidence, has determined the issues against the plaintiffs herein, and has reaffirmed its previous findings.

(e) That thereafter, F. S. Buffum Company, Inc., an intervenor before the Interstate Commission in said proceeding, its docket No. 18364, filed its petition with the Commission for postponement of the effective date of the order and for reconsideration thereof. Said motion was considered by the Commission and denied on February 7, 1933.

(f) On or about February 8, 1933, the State of Florida and the Florida Railroad Commission filed with the Interstate Commission their petition, seeking to have the proceeding reopened for further hearing and consideration, and to have the order of the Commission of July 5, 1932, annulled and set aside. On the same date the plaintiffs herein—Wilson Cypress Company and Wilson Lumber Company of Florida, filed their petition with the Commission, praying that the proceeding be reopened for further hearing and consideration, and that the order of the Commission of July 5, 1932, be set aside or that the effective date thereof be postponed, and for further relief. Said petitions were considered by the Interstate Commission and denied on February 13, 1933."

[fol. 733] 2

The record in this proceeding in this court, including the plaintiffs' supplemental pleadings shows that the action of the Interstate Commerce Commission was based on am-

ple, relevant and controlling testimony; and that the Cum
mer scale of rates have been determined to be, and are
unjust, unreasonable and confiscatory. These proceeding
are, in effect, efforts to require the Atlantic Coast Lin
Railroad Company to continue in operation rates which ar
unjust, unreasonable and confiscatory.

3

This respondent respectfully prays that the motion t
file said supplemental bill be denied, and if the same be al
lowed, that the prayers thereof be denied; and that th
order of the Interstate Commerce Commission of July 5
1932, as amended July 28, 1932, be allowed to go into effec
on February 25, 1933, as ordered by the Interstate Com
merce Commission.

Respectfully submitted, Carl H. Davis, F. B. Grier
W. E. Kay, Alston, Alston, Foster & Moise, Attor
neys for Atlantic Coast Line Railroad Co.

February 24, 1933.

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[fol. 734] [File endorsement omitted]

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[fol. 735] In United States District Court

No. 691

[Title omitted]

Answer of Atlantic Coast Line Railroad Company t
Supplemental Bill—Filed Feb. 24, 1933

Now comes Atlantic Coast Line Railroad Company, in
tervenor in the above stated cause, and without waiving
its motion that the Court deny the motion to file said sup
plemental bill and its motion to dismiss said supplementa
bill, if the same should be allowed, answers the same and
for answer says:

1

Intervenor admits that orators filed their original bil
in this cause on September 9, 1932, against the United
States of America and the Interstate Commerce Commis

sion, seeking to set aside and annul the order of the Interstate Commerce Commission entered on the 5th day of July, 1932, amended on the 28th day of July 1932, in its docket No. 18364, wherein the Commission fixed rates for [fol. 736] intrastate transportation of certain classes of logs over the Atlantic Coast Line Railroad Company, intrastate in the State of Florida for distances of 170 miles or less; that the said cause came on for hearing before this court as is set out in paragraph No. 2; that the said cause was heard on September 14, 1932, and was taken under consideration by this court and briefs were filed thereon by Atlantic Coast Line Railroad Company, the United States of America and the Interstate Commerce Commission, and by the complainants.

2

Intervenor admits that complainants filed with the Interstate Commerce Commission their motion to set aside said order of the Commission entered on July 5, 1932, as amended, and to reopen the proceeding and to have further hearing, setting up, among other things, that certain railroads had filed with the Interstate Commission certain tariffs prescribing scales of rates which are referred to in this supplemental bill as "the newly reduced rates" for the transportation of logs in certain parts of the country, for the most part West of the Mississippi river and immediately east of the Mississippi river. Said rates were [fol. 737] applicable per carload, regardless of weight, size or capacity of cars; that is, a car, say of 60,000 pounds capacity brought the same revenue as a car of 120,000 pounds capacity, and a car loaded with 60,000 pounds would produce the same revenue as a car loaded with 120,000 pounds. The tariffs referred to in paragraph 2 of this supplemental bill are the tariffs referred to in the said motion of complainants to the Interstate Commerce Commission.

All or practically all of the said tariffs are subject to conditions and limitations beyond those set out in said supplemental bill. Said paragraph of said bill does not completely set out the rates which are referred to therein, nor the tariffs therein mentioned. Intervenor avers that practically all of those tariffs carry transit rates; that all or some of them are limited in duration; that all of them are

emergency or experimental rates and were made under special circumstances. The rates under nearly all of said tariffs apply to logs only for "dressing, stacking, creosoting or further manufacture and reshipment"; they do not apply to the general hauling of logs and they are limited in distance. The usual method of applying the so-called transit rates under those tariffs is as follows:

[fol. 738] (a) A shipper desires to ship logs from point X on the line of the carrier which has issued this transit rate, to point Y on the line of the same carrier. At point Y the logs are to be manufactured into lumber or into the various kinds of products into which logs may be manufactured.

(b) The shipper pays the carrier the local (not the transit rate) rate from point of origin (X) to transit point (Y), and preserves the waybills showing payments, weights, dates, etc.

(c) After the logs have been manufactured into one of the many products into which they may be manufactured, the shipper ships the manufactured product to the point of destination of this latter product, shipping the same over the lines of the carrier over which the logs originated.

(d) The carrier bills the shipper on the outbound manufactured material from the transit point (Y) to point of destination, at the rate shown in the filed tariffs. The shipper pays that rate and then the carrier accepts a claim against it in favor of the shipper for the difference between the local rate paid by the shipper and the net transit rate on the rough material which moved from X to Y.

(e) The manufactured product which is shipped out from the transit point must bear a percentage of relation in weight to the weight of the rough material; to illustrate: [fol. 739] If logs have been manufactured into lumber, the manufactured product must be 33⅓% of the weight of the logs. If it has been manufactured into kegs, their weight must be 21% of the weight of the logs. If it is manufactured into headings for slack barrels the weight of the manufactured product must be 20% of the weight of the logs. If manufactured into flooring, chemically treated, the weight of the manufactured product shipped out must

be 18% of the weight of the logs. The tariff makes a great many more gradations.

(f) Some of the tariffs filed by certain railroads authorize the shipper to enter into a contract to perform the obligations imposed upon him by the application of the tariffs covering the transit arrangement. Such tariffs require that the shipper shall give bond conditioned upon the performance by the shipper of the obligations of those tariffs. After such contract has been entered into and bond given, the carrier allows the shipper to make preliminary settlement on the basis of the transit rates on the rough material rather than on the local rates subject to the performance by the shipper of the obligations imposed upon him by the tariffs prescribing the transit rates.

[fol. 740] 2 (a)

On October 21, 1932, the Commission, in its Docket No. 18364 and upon the petitions for rehearing and reconsideration, filed by Wilson Cypress Company and Wilson Lumber Company of Florida and by the State of Florida and the Florida Railroad Commission and by E. S. Buffum Company, entered its order in which it directed that:

"said proceeding be, and it is hereby, reopened for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant:"

The Commission further ordered that the operation of the order "heretofore entered in this proceeding on July 5, 1932, as amended by order of July 28, 1932, be, and it is hereby, suspended until the further order of the Commission."

The reopened hearing was fixed for November 10, 1932 at ten o'clock a. m. at the Hotel Mayflower, Jacksonville, Florida. The time of said hearing was changed on Oc- 28, 1932 by order of the Commission, to November 21, 1932.

On said date the said reopened hearing was had at the time and place aforesaid. It was presided over by E. J.

[fol. 741] Hoy, Esq., Examiner. The complainants in this proceeding were represented at said rehearing by counsel, and introduced oral and written testimony, examined and cross-examined witnesses and also introduced a large number of exhibits. There were sixteen witnesses examined. Appearances were entered for the Florida Railroad Commission, the State of Florida, Wilson Cypress Company, Wilson Lumber Company of Florida, F. S. Buffum Co. Inc., Southern Cypress Manufacturing Association, Jacksonville Traffic Bureau and the Atlantic Coast Line Railroad Company. The hearing continued until six-thirty p. m. o'clock on November 22nd. The oral testimony delivered at that hearing covered 354 pages as officially reported, besides the exhibits. Arguments were had on behalf of all the parties and as officially reported cover about 50 pages.

The Commission considered all of the evidence, oral and documentary and all of the arguments; and on January 9, 1933 filed its report on the further hearing and entered its order thereon in which it ordered "that the order heretofore entered in this proceeding on October 21, 1932, suspending the operation of the order of July 5, 1932 as amended by order of July 28, 1932, until the further order of the Commission, be, and is hereby, vacated and set aside as of February 11, 1933. Thereafter the aforesaid order [fol. 742] of July 5, 1932 as amended by order of July 28, 1932 shall remain in full force and effect until the further order of the Commission."

The last mentioned order was amended by the Commission on January 19, 1933, so as to set aside the order entered on October 21, 1932, as of February 25, 1933, and to provide that thereafter the order previously "entered in this proceeding on July 5, 1932 as amended by order of July 28, 1932, remain in full force and effect until the further order of the Commission."

2 (b)

At the said hearing on November 21-22, 1932, all of the tariffs mentioned in paragraph 2 of said supplemental bill and all of the tariffs mentioned in paragraph 5 of said supplemental bill, except, as respondent believes, tariff No. 5685 AA issued by the Missouri Pacific Rd., I. C. C. 8212, and tariff I. C. C. A-659, supplement 15, issued by the

Southern Railway, were introduced in evidence, and witnesses were examined in reference thereto. Other tariffs in addition to those listed in said supplemental bill were also offered and received in evidence. The Commission considered all of said tariffs not only in the limited manner in which they were pleaded, but in their completeness; that is, the Commission considered each and every term and condition thereof and also the circumstances in connection therewith and the conditions which occasioned the filing of same. There was no limitation upon the evidence offered [fol. 743] for the purpose of showing the change in the rates on logs since the close of the previous hearing before the Commission; nor as to the circumstances connected therewith and the conditions which occasioned such changes; nor as to whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates over the Atlantic Coast Line.

2 (c)

The Commission, through Mr. Commissioner Meyer, filed its report on said reopened hearing on January 9, 1933. Copy of that report is attached to the supplemental petition in this cause and reference is made to it.

It is shown in said report that the tariffs under consideration are rarely ever system-wide. They apply to limited parts of the lines as well as to limited distances; and that the rates on the lines issuing those tariffs are "not uniform."

"The per car rates of the Illinois Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and [fol. 744] York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi

River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products," etc.

The rates under those tariffs do not supplant the local log rates of those lines prior to the issue of the special rates under those tariffs. The Commission found that those rates were established

"primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist * * * Carrier competition also had a considerable influence in the establishment of these rates."

The Commission also found that:

"It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product; and that while these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

[fol. 745] The Commission, in its report of January 9, 1933, further analyzed these rates as follows:

"Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All, except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of

the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also to points to which they are applicable if the tariff provisions referred to above are not complied with. The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York and Chattanooga are local rates and their application is not dependent upon the outbound movement of the manufactured products over their lines."

The Commission made an extensive analysis of the evidence and of the effect which the evidence showed these rates had produced upon the transportation of logs and also upon the truck competition in Florida.
[fol. 746] The Commission also found that the freight traffic manager for the Atlantic Coast Line Railroad Company testified:

"That there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks;"

and that it

"could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad stations represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars."

From July 1, 1930 to July 31, 1931 the decrease in the log traffic over the Atlantic Coast Line was 792 carloads, or 24.4 per cent. as found by the Commission. The Commission also found that

"The decrease in defendant's Florida Lumber traffic during the same period was even greater. From July 1, 1930, to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles and laths originating in Florida,

whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all Class I carriers in the southern region, and over all class I carriers in the United States."

[fol. 747] "For example, from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following 9 months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all class I carriers in the southern region and by all class I carriers in the United States were 27, 28 and 30, respectively."

2 (d)

The Commission reviewed the contention of the complainants in this cause and of the other shippers who are referred to in the Commission's report as "the Florida interveners," to the effect that transportation conditions are substantially similar throughout southern territory. The Commission then found:

"Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that [fol. 748] territory. We referred to Southern Class Rate case in which we prescribed class rates for that part of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable

commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida then were prescribed in the Class Rate case. In Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286, the rates prescribed for the hauls in Florida were approximately 40 per cent higher than for the remainder of southern territory."

2 (e)

The Commission also found that:

"Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances."

[fol. 749] No condition mentioned in any of the territory referred to and no rates prescribed by any of the tariffs referred to were left unconsidered by the Interstate Commission. The findings of the Commission in its reopened hearing, as in the preceeding hearings, were, and are, amply supported by evidence, which not only justified but required the conclusions made by the Commission in its order and report of January 9, 1933.

All of the findings of fact made by the Commission in its said report, and herein set out, are alleged by this respondent to be true and correct as therein stated, and are by this respondent pleaded as facts.

2 (f)

Following the said decision of the Commission, and on or about January 25, 1933, F. S. Buffum Company, Inc., intervenor, filed its petition with the Interstate Commission

for postponement of the effective date of the Commission's order and for further hearing and reconsideration, to which petition Atlantic Coast Line Railroad Company filed an answer. On February 7, 1933 the Commission entered its order denying the petition of said F. S. Buffum Company, Inc.

3

Atlantic Coast Line Railroad Company admits that on February 8, 1933, after the said Buffum petition had been denied by the Commission, the Wilson Cypress Company and the Wilson Lumber Company of Florida, and at about [fol. 750] the same time, the State of Florida and the Florida Railroad Commission filed with the Interstate Commerce Commission their petitions for further hearing and reconsideration of the proceedings in the Commission's docket No. 18364. In said petitions certain additional tariffs and certain new rates were set up as are mentioned in paragraph 7 of said supplemental bill. The Atlantic Coast Line will now deal with each of those tariffs as set up in paragraph 7 of the supplemental bill and which were set up in the aforementioned petitions before the Commission.

3 (a)

Plaintiffs refer to rates of the Louisville & Nashville Railroad under tariff I. C. C. No. 16022, supplement 19, effective January 27, 1933. The rates provided for in said tariff apply only to raw materials shipped from point of origin to the manufacturing point, when the products manufactured therefrom move out over the lines of the Louisville and Nashville Railroad in the proportions set out in this tariff. Said tariff is applicable for distances not in excess of 100 miles. It does not apply to all points on its system. It does not displace local rates. This tariff was put into effect in circumstances and conditions exactly similar to those considered by the Commission in the reopened hearing had on November 21-22, 1932. The rates provided for in said tariff expire August 6, 1933, unless sooner cancelled, changed or extended.

[fol. 751] 3 (b)

Plaintiffs refer to certain rates of the Atlantic Coast Line Railroad Company provided for in its tariff I. C. C. No.

2745 (2745-B) and in Rule 127 of said tariff. The tariff referred to is A. C. L. R. R. Lumber Transit Tariff No. 12, which cancels A. C. L. R. R. Lumber Transit Tariff No 11, I. C. C. No. B-2639 and the scale of rates referred to in Rule 127 was orginally published in Supplement No. 23 to A. C. L. R. R. I. C. C. tariff No. B-2639, effective September 8, 1932, which was prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates provided for by this tariff do not apply to logs. They are transit rates applicable to certain forest products, other than logs, which move to Montgomery over the A. C. L.'s lines for creosoting and other treatment and which products, after such treatment, move to market from Montgomery in a back haul over the lines of the A. C. L. The statement of the rates shown by said tariff as made by the plaintiffs in the supplemental bill is incorrect. The Atlantic Coast Line charges in addition to the net transit rates therein quoted, 2½ cents per 100 pounds upon the shipments covered thereby.

[fol. 752] 3 (c)

Plaintiffs refer to Supplement No. 1 of the above mentioned tariff I. C. C. 2745 (properly I. C. C. B-2745) published by Atlantic Coast Line, effective December 10, 1932 fixing rates on certain products.

Atlantic Coast Line states that said tariff does not apply to logs. The said tariff was put into effect on August 29, 1932, which was before the date of the rehearing before the Interstate Commission, and Supplement No. 1 only added some additional stations thereto. The said Supplement No. 1 specifically designates the rates as "extra charges for back or out-of-route hauls, which are in addition to through rates and stoppage charges."

The rates as stated in plaintiff's supplemental bill are not the rates which are assessed on the original inbound movements but represent the net transit rates to which are added the transit charge of 2½ cents per 100 pounds.

3 (d)

Plaintiffs refer to certain rates of the Central of Georgia Railway in its tariff I. C. C. No. 2851, effective September 27, 1932 to Augusta and Waynesboro, Georgia. The rates referred to in said tariff are applicable only when the raw

material shipped in over the Central of Georgia's lines has been manufactured and the manufactured product is [fol. 753] shipped out over the Central of Georgia's lines in the proportions set out in the tariff. The circumstances and conditions under which this tariff went into effect were the same as those considered by the Interstate Commission in its reopened hearing had on November 21-22, 1932.

3 (e & f)

Plaintiffs refer to rates of the Norfolk & Southern Railroad under its tariff I. C. C. No. A-760. This tariff provides for transit rates and does not apply to logs.

3 (g)

Plaintiffs refer to rates by the Georgia & Florida Railroad Company under its tariff I. C. C. No. 558, effective May 6, 1931. This tariff was in effect long before the petitions before the Commission for reopening were filed. This tariff applies only to logs which are shipped over the [fol. 754] Georgia and Florida's lines to the transit point and the products manufactured therefrom are reshipped over the same lines in the proportions prescribed in the tariff. These rates do not apply to all stations, and do not supplant local rates. The rates under this tariff are on a parity with the rates which have been adjudged by this court, in the cases claiming restitution from Atlantic Coast Line Railroad Company, to be unjust, unreasonable and confiscatory.

3 (h)

Plaintiffs refer to rates of the Seaboard Air Line Railway under its tariff I. C. C. No. 115, effective July 14, 1930. This tariff was in effect long prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates stated in this tariff apply only when the products manufactured from the inbound logs are reshipped via the Savannah & Atlanta Railway's lines in accordance with the terms of the tariff; and apply to only three stations; and are limited to distances of 75 miles.

[fol. 755] 3 (i)

Plaitniffs refer to rates of the Seaboard Air Line Railway in its tariff I. C. C. No. A-7528, supplement 8. This tariff covers rates from stations between Branchville, Va.,

and Littleton, North Carolina (including Branchville and Littleton), and between Severn, N. C. and Lewiston, N. C. (including those two places) to Boykins, Virginia. The rates under this tariff expire June 30, 1933, unless sooner cancelled, changed or extended. The maximum distance to which the rates under this tariff apply is 44.7 miles; and they apply to one destination from a limited number of stations.

Plaintiffs also refer to rates under this same tariff, supplement 9. The rates prescribed by this tariff apply from one point to one destination—Fitz Siding, N. C. to Norfolk, Virginia, 61 miles.

3 (j)

Plaintiffs refer to Southern Railway rates under its tariff I. C. C. No. 10425, supplement 7. The rates under this tariff expire December 3, 1933 unless sooner cancelled, changed or extended. They apply to logs, etc. from Southern Railway stations to Knoxville, Tenn., from C. N. O. & T. P. stations to Dayton, Tennessee, and from Southern Railway stations to Fayette, Tenn. The rates under this tariff were published to meet truck competition.

[fol. 756] All of the above mentioned tariffs and rates which are referred to in paragraph 7 of plaintiffs' supplemental bill and which are in addition to those which were specifically set up in the reopened hearing before the Interstate Commerce Commission on November 21-22, 1932, were issued under the same kind of circumstances and conditions as were those submitted at said reopened hearing. The rates fixed in those tariffs, if applied to the Florida territory over the Atlantic Coast Line Railroad Company would be unjust, unreasonable and confiscatory. All or nearly all of them are transit rates applicable to limited distances. They do not supplant the local rates and apply between limited stations.

3 (k)

The Interstate Commerce Commission carefully considered the aforementioned petitions for further hearing and reconsideration, and the rates and tariffs therein referred to and on February 13, 1933 denied the prayers of said petitions.

3 (1)

In so far as the above mentioned tariffs apply to carloads without regard to the weight carried, they are on a basis which has been disapproved by the Supreme Court of Florida and by the Interstate Commerce Commission. [fol. 757] They are unjust and unremunerative and are unjustly discriminatory, not only as against commerce, but also as between shippers.

(4)

(a) Answering the allegations of paragraph 9 of plaintiffs' supplemental bill Atlantic Coast Line Railroad Company alleges that the aforementioned "newly reduced rates" are not in effect in southern and southwestern territories throughout the country. Only rarely do they apply throughout any one system. They are limited in application to stations and to distances. They do not supersede the local tariffs. They do not apply in any part of the State of Florida south of the line made by the Louisville & Nashville Railroad Company's line and the Seaboard Air Line Railway Company's line from Pensacola to Jacksonville. None of them applies in that territory of the state of Florida which has been hereinbefore described and which is referred to in the report of January 9, 1933 of the Commission as being sharply differentiated from the other southern territory and which differentiation has been made by the Interstate Commission in this particular case on the rehearings in this case and as well in the Class Rate case and in Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286; all of which is more fully set out in the report of the Commission in its docket No. 18364, and hereinbefore quoted. [fol. 758] This differentiation is noted not only by the Commission in its report on the reopened hearing, but as well in its report of July 5, 1932 (146 I. C. C. 717).

The said rates are all experimental and are made for the purpose of meeting truck competition and in some instances not only truck competition but rail as well. The application of said rates has not produced satisfactory results to the carriers who have put them into effect.

While the Atlantic Coast Line Railroad Company owns a majority vote of the shares of capital stock of the Louis-

ville & Nashville Railroad Co., it has never exercised and does not now exercise any control over its traffic policies. This has been made known to the Interstate Commission in other cases as well as in this one.

Respondent is not advised as to whether or not any of the so-called "newly reduced rates" apply over the Central of Georgia Railway in Florida, but it avers that the Central of Georgia has all but no mileage in the State of Florida. It simply has the stub-end of a line which runs two (2) miles south of the Alabama-Florida line.

None of the rates which are referred to as the "newly reduced rates" are applicable in Florida below the line which divides the State for rate-making purposes and in the southern part of which the higher rates apply, as has been hereinbefore pointed out.

(b) The report of the Interstate Commerce Commission on the second reopened hearing, which report is dated January 9, 1933, fairly and fully states the tariffs, their limitations and conditions.

[fol. 759] (c) The rates which are called the "newly reduced rates" have not been authorized by the Interstate Commerce Commission. Tariffs were filed evidencing those rates. No complaints were lodged against them. The Interstate Commission's jurisdiction to fix minimum rates is limited, and those rates became effective without action by the Commission.

This court has previously held, in the cases claiming restitution against Atlantic Coast Line Railroad Company, that the Cummer scale of rates is unjust, unreasonable and confiscatory. The "newly reduced rates" are made upon a basis which is likewise unreasonable, unjust and confiscatory as to those roads upon which they may be imposed. They are also made upon a car load basis without regard to weight, which lends itself to discrimination and to inexactness of charges and treatment, and if said rates were imposed upon this carrier in the territory herein involved they would be all the more unjust, unreasonable and confiscatory.

(d) Without admitting the correctness of the table of rates contained in subparagraph (d) of paragraph 9 of plaintiffs' supplemental bill, it is respectfully submitted that the said table shows how unjust, unfair and unreason-

able are the rates sought to be imposed upon the Atlantic Coast Line by this proceeding.

[fol. 760] (e) The allegations of subparagraph (f) of paragraph 9 of plaintiffs' supplemental bill, in so far as it alleges that the so-called "newly reduced rates" are in some instances transit rates, are admitted. In fact, practically all of said rates are transit rates. The exceptions to this are relatively small and in such exceptions little, if any, traffic moves. The Cummer scale of rates is not a scale of transit rates.

(f) The Interstate Commission has held that the so-called "newly reduced rates" do not supplant the local rates; that the Cummer scale provides rates which are unjust, unreasonable and confiscatory has been determined by the Commission three times and also by this Court.

(g) The allegations of subparagraph (h) of paragraph 9 of plaintiffs' supplemental bill are denied. The Interstate Commission has found in its report on the reopened proceeding, and in other causes, that the territory involved in this cause is not as favorably situated from a transportation standpoint as other territories in the southeastern part of the country.

[fol. 761] (5)

Answering paragraphs 10, 11 and 12 of plaintiffs' supplemental bill the Atlantic Coast Line Railroad Company denies the allegations of each of said paragraphs.

The findings that the Cummer scale of rates is unjust, unreasonable and confiscatory, have been sustained by this court as hereinabove set out. The Commission has found on ample evidence that the rates under the Cummer scale make an unjust discrimination against interstate commerce and put an unjust burden thereon.

Wherefore respondent having answered the allegations of said supplemental bill, prays that the same be dismissed and the prayers thereof be denied; that the injunction and restraining order prayed for in said supplemental bill be

refused; and that this respondent have such other and further relief as may be meet and proper.

Carl H. Davis, W. E. Kay, F. B. Grier, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 762] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

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[fol. 763] [File endorsement omitted.]

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[fol. 764] IN UNITED STATES DISTRICT COURT

No. 691

[Title omitted]

PETITION OF GEORGIA PUBLIC SERVICE COMMISSION TO INTERVENE IN THE ABOVE STATED CAUSE—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, and respectfully represents unto this Honorable Court that it was the petitioner before the Interstate Commerce Commission in the proceeding in its Docket No. 18364, out of which the reports and orders of the Interstate Commission complained of in this proceeding originated; and prays to be allowed to intervene in this cause.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

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[fol. 765] [File endorsement omitted.]

[fol. 766] IN UNITED STATES DISTRICT COURT

No. 691

[Title omitted]

MOTION OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO DENY THE MOTION OF PLAINTIFFS TO FILE SUPPLEMENT BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor, and respectfully moves this court to deny the motion of Wilson Cypress Company and Wilson Lumber Company of Florida, to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

1

The proceedings in this case show that all of the matters and things which are set out in the supplemental pleadings have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evi-
[fol. 767] dence, the Interstate Commission has found that the matters and things set out in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its Docket No. 18364.

2

The record in this proceeding in this court, including plaintiffs' supplemental pleadings shows that the action of the Interstate Commission was based on ample, relevant and controlling evidence; and that the Cummer scale of rates has been determined to be unjust, unreasonable and confiscatory.

3

This intervenor respectfully prays that the motion to file said supplemental bill be denied, and if the same be

allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932 be allowed to go into effect on February 25, 1933, as ordered by the Interstate Commission.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson.

February 24, 1933.

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[fol. 768] [File endorsement omitted]

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[fol. 769] IN UNITED STATES DISTRICT COURT

No. 691

[Title omitted]

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor in the above stated cause, and without waiving its motion that the court deny the motion of Wilson Cypress Company and Wilson Lumber Company of Florida, to file said supplemental bill and its motion to dismiss said supplemental bill if the same should be allowed, answers the same and for answer says:

1

This intervenor does not deem it necessary to answer the various allegations of said supplemental bill in detail. Intervenor states that the findings of the Interstate Commerce Commission in its report of August 2, 1928 and in its report on the reopened proceedings, of July 5, 1932, and in its report and order on the second reopened hearing, of January 9, 1933, in this proceeding, known as its Docket No. 18364, are all based on ample and controlling evidence, much of which is wholly uncontradicted.

[fol. 770] 2

The findings of the Interstate Commission in said hearings represent the legislative action of the Commission on facts submitted to it after due notice to all parties concerned and in which all of the parties were permitted to offer evidence, to file briefs and to make arguments. All of the matters were considered with painstaking care over a long period of time. The Interstate Commission's findings on those facts are conclusive.

The Interstate Commission in its first report in this cause of August 2, 1928 established not only certain intrastate rates on logs for application in Florida, but also interstate rates for the transportation of the same kind of logs between points in Florida and Georgia. Those intrastate rates have since been reaffirmed by the Interstate Commission, and there has been no contest over the interstate rates.

This intervenor avers that there is, in its judgment, no reason why the intrastate rates involved in this proceeding on logs over six feet in length, in Florida, should differ from interstate rates on the same kind of logs moving from points in Florida to points in Georgia; and that as hereinbefore stated, the said interstate rates have not been contested.

[fols. 771 & 772] 3

Intervenor represents that this situation has been an unsettled one for about eight years now, and caused this intervenor to suspend on the 25th day of May, 1925, a schedule of intrastate rates in Georgia which it had issued on April 15, 1925. That schedule of rates was comparable to and almost in exact conformity with the interstate rates put into effect by the Interstate Commission in this proceeding, applicable to the transportation of certain kinds of logs between points in Florida and points in Georgia.

4

This intervenor prays that the injunction prayed for in said supplemental bill be denied and that the order of the Interstate Commerce Commission of July 5, 1932 as

amended July 28, 1932 be allowed to become effective February 25, 1933.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

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[fol. 773] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 695

F. S. BUFFUM COMPANY, INC., Petitioner,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Oct. 14, 1932

To the Honorable the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

Petitioner F. S. Buffum Company, Inc. respectfully represents:

I

Petitioner is a corporation, organized and existing under the laws of the State of Florida, having its principal office at 234 Ives Street in the city of Jacksonville, Florida and is engaged in the business of buying and shipping hardwood logs, including cypress, ash, oak and other kinds, from points in Florida to its mill at Jacksonville and manufacturing, selling and shipping lumber from its mill which is located on and served exclusively by the lines of the Atlantic Coast Line Railroad Company.

II

Petitioner brings this suit in equity against the United States of America under an act of Congress approved October 22, 1913, known as the "District Court Jurisdiction Act", (38 Stat. L. 219), to enjoin, set aside, suspend and

annul a certain order entered by the Interstate Commerce Commission, hereinafter called "The Commission", an ad-
of ministrative tribunal created by Act of Congress of Feb-
[fol. 774] ruary 4, 1887, and whose duties and powers are defined in such act and amendments thereto and supplements thereof, said order being dated July 5, 1932, in a proceeding known as Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, and instituted by the Georgia Public Service Commission, a public tribunal of the State of Georgia; created by the laws of Georgia and having its legal residence in and being a resident of the Northern District of Georgia.

III

The Atlantic Coast Line Railroad Company is a common carrier of freight and, as such, owns and operates various lines of railroad within the state of Florida, over which it transports and has been transporting logs to petitioner's mill at Jacksonville, and over which it transports and has been transporting lumber shipped from petitioner's mill and destined to various interstate points throughout the country. For the transportation of such logs wholly within the State of Florida, as aforesaid, the Atlantic Coast Line Railroad Company voluntarily established in the year 1914 and thereafter voluntarily continued in effect until February 9, 1929, certain mileage or distance scale of rates known as the "Cummer Scale", which for varying distances up to 170 miles provides varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way".

IV

Effective February 9 1929, the Atlantic Coast Line Railroad Company filed freight tariffs with The Commission purporting to cancel out the said Cummer Scale and pur-
porting to establish in lieu thereof a new, higher and dif-
[fol. 775] ferent scale of rates, citing as its authority for such changes, the decision of The Commission in Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 146 I. C. C. 717, (Docket 18364) in which The Commission, Division 4, found that the Florida intrastate Cummer scale of rates resulted and would result in undue preference and advan-

tage of shippers of intrastate traffic within Florida, in undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia, and in unjust discrimination against interstate commerce, and that said undue preference and advantage should be removed by establishing rates for intrastate application within Florida which would correspond with the rates found reasonable by The Commission for interstate application from northern Florida points to Georgia.

V

On March 7, 1931 this Honorable Court, pursuant to the decision of the Supreme Court of the United States in Florida v. United States, 282 U. S. 194, (in which the Supreme Court reversed the decree of the lower court (30 Fed. (2d) 116 and 31 Fed. (2d) 580)) ordered and adjudged that all parts of the said order of The Commission in 146 I. C. C. 717 which prescribed or attempted to prescribe rates for the transportation of logs in intrastate commerce in the State of Florida on the lines of the Atlantic Coast Line Railroad Company were invalid and unlawful, and such parts of said order of The Commission were thereby enjoined, set aside and annuled.

VI

Effective April 10, 1931, pursuant to the said orders of this Honorable Court, the Atlantic Coast Line Railroad [fol. 776] Company filed with The Commission new freight tariffs cancelling out The Commission's first prescribed scale of rates on logs for application on Florida intrastate traffic, and restoring the Cummer scale.

VII

The Commission, in its Report on Further hearing in Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 186 I. C. C. 157 (Docket 18364) decided July 5, 1932, modified its previous findings in the original report, 146 I. C. C. 717, and, among other things, found that the Cummer scale places a substantial burden upon defendant's interstate revenues, and is and for the future will be unjustly discriminatory against interstate commerce; and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line

in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in Appendix F to the Commission's report in 186 I. C. C. 157, at page 198, hereinafter called the Appendix F scale, which, said The Commission, are the rates found reasonable by The Commission for interstate application from northern Florida to Georgia. In the same report The Commission in substance withdrew its finding in the original report that the Cummer scale resulted and would result in undue preference and advantage of shippers of intrastate traffic within Florida, and in undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia, and The Commission decided that it would make no finding in that regard. The Commission, by its order of July, 1932, notified and required the Atlantic Coast Line Railroad "to cease and desist from practicing the unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force and maintain rates for the transportation of logs over [fol. 777] six feet in length, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within and throughout the state of Florida for distances of 170 miles or less, which shall be the same as those set forth in appendix F to the aforesaid report on further hearing". The said order of the Commission fixed no date upon which the order should become effective, and merely required that "this order shall continue in force until the further order of the Commission". The rates ordered by the Commission to be established by the Atlantic Coast Line Railroad as set forth in the said appendix F to the Commission's report were prescribed as "Minimum rates per 100 pounds prescribed herein on Florida intrastate log traffic", to wit:

| Distances | Rate cents[1] | Distances | Rate cents |
|---|---|---|---|
| 10 miles and under | 2.5 | 85 miles and over 70 | 5.5 |
| 20 miles and over 10 | 3 | 100 miles and over 85 | 6 |
| 30 miles and over 20 | 3.5 | 120 miles and over 100 | 6.5 |
| 40 miles and over 30 | 4 | 140 miles and over 120 | 7 |
| 55 miles and over 40 | 4.5 | 160 miles and over 140 | 7.5 |
| 70 miles and over 55 | 5 | 170 miles and over 160 | 8 |

[1] Minimum 40,000 pounds.

VIII

On July 28, 1932, The Commission amended its order of July 5, 1932, and therein ordered that the Appendix F

scale of rates shall become effective "on or before September 15, 1932".

IX

Thereafter the Atlantic Coast Line Railroad Company in purported compliance with the said orders of The Com-[fol. 778] mission filed new freight tariffs with The Commission, cancelling out the application of the Cummer scale on Florida intrastate log traffic and substituting therefor The Commission's Appendix F scale of rates, to become effective September 15, 1932.

X

On September 14, 1932, the said orders of The Commission, dated July 5 and July 28, in Georgia Public Service Commission v. Atlantic Coast Line Railroad Company (Docket 18364) were enjoined by interlocutory order of this Honorable Court in Equity No. 691 et al upon petitions filed by The State of Florida, Wilson Cypress Company, Wilson Lumber Company of Florida and others against the United States of America, Interstate Commerce Commission as defendants so that the Cummer scale still remains in effect upon the date of the filing of this petition by your Petitioner herein.

XI

Petitioner's mill plant at Jacksonville represents an investment of many thousands of dollars. Petitioner has been employing some one hundred and twenty-five persons thereat, more or less, and has been giving employment to some hundred or more persons who have been engaged in cutting logs in the interior of Florida for shipment to Petitioner's mill.

Petitioner began the operating of its mill at Jacksonville in June, 1930, subsequent to the first report and decision of The Commission in Georgia Pub. Serv. Comm. v. Atlantic C. L. R. Co., 146 I. C. C. 717.

Prior to April 10, 1931, when the Cummer scale was restored petitioner could not ship logs to its mill by railroad under the high rates prescribed by The Commission. Prior to that date petitioner had contracted for and was

receiving about 72 cars of logs per month by truck and by water and only about 12 cars by rail, a total of 84 cars per month which only enabled petitioner to operate its mill intermittently during the period that the high rates prescribed by The Commission were in effect. Subsequent to the restoration of the Cummer scale, and after petitioner's [fol. 779] contract for delivery of logs by water and truck had expired petitioner immediately increased its shipments of logs by rail in sufficient quantities to enable it to operate its mill to capacity whenever sufficient orders were available.

During the first eight months of the current year, 1932, petitioner received an average of about 76 carloads of logs by rail per month, an increase of about 633 per cent, from various log-shipping points on the lines of the Atlantic Coast Line Railroad, such as Lake Butler, Alachua, Orlando and other stations over the Atlantic Coast Line Railroad to Petitioner's Jacksonville mill, which is located on and served exclusively by the Atlantic Coast Line Railroad.

Petitioner has been using hardwood logs, such as cypress, ash, oak and other kinds, and has not used pine logs, such as were the primary source of controversy in the original proceedings before the Commission (146 I. C. C. 717) and this Honorable Court (30 Fed. 2d 106 and 31 Fed. 2d 580).

Petitioner has been paying freight charges on its inbound shipment of such logs to the Atlantic Coast Line Railroad Company on basis of the Cummer Scale since April 10, 1931.

On or about September 12, 1932, in the expectation that the rates would be increased under the said orders of The Commission, the cutting of logs at interior Florida points adjacent to the Atlantic Coast Line practically ceased, shipments of logs by railroad to petitioner's mill likewise ceased, and on October 4, 1932, petitioner was compelled to stop the operation of its mill. After the issuance of the orders of this Honorable Court, enjoining the said orders of The Commission, the cutting of logs at interior Florida points was resumed, shipments of logs by railroad to petitioner's mill were resumed and petitioner, during the week of October tenth, 1932, revived the operation of its mill. During the interim when the said plant was closed the Atlantic Coast Line Railroad's revenues from this traffic

in logs was reduced from substantially large sums to practically nothing. By reason of the Commission's orders, [fol. 780] petitioner has been thereby placed in jeopardy of losing its entire investment and its business, and the value of its going concern.

XII

Important and vital changes have occurred since the hearings were held before The Commission as reported in 186 I. C. C. 157. The knowledge is common that basic commodity prices have persisted at new low levels; that the reduction in railroad freight and passenger traffic, due to the rapid growth of motor vehicle and water competition has caused the railroad lines generally to cease their attempts to increase rates to make up for lost traffic and to inaugurate many widespread and drastic reductions in freight rates as the effective means of increasing their traffic and revenues in recognition of the fact that the price of transportation must follow the general price level of the basic commodities transported.

In keeping with these radical changes many rates on logs have been recently established, some during the summer of 1932, subsequent to the Commission's decision in 186 I. C. C. 157, and many of such new rates are on a level with, commensurate with, and in instances lower than the Cummer scale. Most of such new scales are applicable on intrastate shipments of logs where the lumber products therefrom are afterwards moved out over the line of the inbound carrier under transit rules and regulations. Such situations are similar to the inbound movement of logs to Petitioner's mill, and the outbound movement of lumber over the line of the inbound carrier, except that the fiction of "transit" is not accorded to petitioner at Jacksonville by the Atlantic Coast Line Railroad Company.

Illustrative of such new and recently reduced rates on [fol. 781] logs are the following:

| Distance | Rate per car regardless of weight | |
|---|---|---|
| 25 miles and less | $12.00 | (Note 1) |
| 50 miles and over 25 miles | 15.00 | |
| 75 miles and over 50 miles | 17.50 | |
| 100 miles and over 75 miles | 20.00 | (Note 2) |

NOTE 1. Southern Railway rate is $12.50 per car to Chattanooga and $12.00 per car to Memphis.

NOTE 2. St. Louis-San Francisco Railway rate is $22.50 per car.

Such new, reduced log-rate scales apply from stations on the Mobile & Ohio Railroad to certain points in Mississippi, Alabama, Kentucky and Tennessee (M. & O. I. C. C. B-860); from stations on the Illinois Central Railroad to certain points in Mississippi (I. C. C. 7786); from stations on the Yazoo & Mississippi Valley Railroad to certain points in Mississippi (Y. & M. V. I. C. C. 7810); between points on the Nashville, Chattanooga & St. Louis Railway on interstate traffic (N. C. & St. L. Ry. I. C. C. 3284-A) and in Tennessee on intrastate traffic (N. C. & St. L. Ry. Tariff 6); from points in Alabama, Georgia and Tennessee over the Southern Railway to Chattanooga (Sou. Ry. I. C. C. A-10425); from Southern Railway stations in Tennessee and Mississippi to Memphis, Tenn. (Sou. Ry. I. C. C. A-10448); and between stations on the St. Louis-San Francisco Railway in Alabama, Mississippi and Florida (St. L. S. F. Ry. I. C. C. 9019) as published in tariffs filed with the Interstate Commerce Commission and accepted by it under the I. C. C. tariff numbers shown in the parentheses above. All of the above named tariffs apply upon lines of the named carriers which are in the same territorial rate-group as the Atlantic Coast Line Railroad, namely, the Southern group and in log producing regions where the transportation conditions surrounding the movements of logs has been declared by witnesses for the Atlantic Coast Line Railroad Company to be substantially similar to those in Florida. The said scale of new rates on logs is in effect in western Florida over the lines of carriers other than [fol. 782] the Atlantic Coast Line Railroad and apply when the outbound products move over the line of the inbound carrier under transit rules and regulations in interstate traffic.

XIII.

Effective August 12, 1932, numerous other rates, designated as specific commodity rates, producing less revenue per car than the Cummer scale were established in Southern Railway tariff I. C. C. A-10467 on timber, piling, poles, lumber and cross ties from stations on the Southern Railway's Charleston division over the Southern Railway to Charleston, S. C., as proportional rates in connection with outbound shipments of products manufactured therefrom, as illustrated in the following table where the rates and revenue per car of 50,000 pounds are compared with like revenues under the Cummer scale:

| To Charleston from | | Cents per 100 lbs. | Revenue per car of 50,000 lbs. New rates | Cummer scale |
|---|---|---|---|---|
| Edgefield, S. C. | 144 miles | 2 | $10.00 | $17.00 |
| Columbia, S. C. | 130 miles | 1½ | 7.50 | 17.00 |
| Orangeburg, S. C. | 79 miles | 1 | 5.00 | 11.50 |

These new rates to Charleston apply on lumber, as well as piling and timber, and lumber is of higher value than logs. Charleston is in the Southern rate group and is served by the Atlantic Coast Line Railroad Company. As an outbound shipping point Charleston is competitive with Jacksonville.

XIV

A scale of new rates on logs, reduced to meet truck competition, which produces revenue per car in certain instances commensurate with and about equal to the Cummer scale, was established effective intrastate on August 15, 1932, and interstate September 13, 1932, in Central of Georgia Railway's tariff I. C. C. No. 2848 on "logs, all kinds, carloads of any weight, from stations on its line in [fol. 783] Georgia and Alabama to Montgomery, Ala., as follows:

| Distances | Rates (in cents) per car, any weight |
|---|---|
| 25 miles and under | 1450 |
| 50 miles and over 25 | 1750 |
| 75 miles and over 50 | 2000 |
| 100 miles and over 75 | 2250 |

such rates to be applied as proportionals in connection with the outbound movement of lumber products over the line of the inbound carrier in the ratio of not more than three pounds of logs inbound to one pound of lumber products outbound.

XV

In August, 1932, and at other recent times, new reduced scales of rates on logs have been filed with The Commission and have been permitted to become effective within Southwestern territory between points on the Missouri Pacific Railroad in Arkansas, Louisiana, Missouri, Oklahoma and Texas (M. Pac. I. C. C. A-8212); between points on the Chicago, Rock Island & Pacific Railway in Arkansas

and Louisiana (C. R. I. & P. Ry. I. C. C. No. 12130); between points on the St. Louis Southwestern Railway in Arkansas, Louisiana and Missouri (St. L. S. W. Ry. I. C. C. 4676); between points on the St. Louis-San Francisco Railway in Arkansas and between points in Arkansas and points in Missouri (St. L. S. F. Ry. I. C. C. 9346).

The reduced rates so made applicable in southwestern territory as aforesaid are identical in level with the newly reduced rates made applicable in the southern rate group as aforesaid, save that the rate per car regardless of weight for transportation a distance of 100 and over 75 miles is $22.50 and that on the St. L. S. F. Ry. the said rates are applicable on cars of 90,000 lbs. or less, to be charged excess proportionately. Otherwise the same rates are applicable in southwestern territory as per carload rates regardless of the weight of the car transported.

[fol. 784] XVI

The Cummer Scale is a mileage scale of rates expressed in lump sum terms per car of minimum weight of 50,000 pounds, excess in proportion; the newly reduced rates which The Commission has permitted to become effective in interstate commerce and in intrastate commerce in states other than Florida is expressed in lump sum terms per car regardless of weight; the capacity of cars in which logs ordinarily are loaded for transportation in intrastate commerce or in interstate commerce in the southeastern territory ordinarily exceeds 80,000 pounds. And this petitioner avers that it is the custom of the shippers of traffic, particularly logs, in shipping upon rates named per carload regardless of weight, to load to the full carrying capacity of the car; and that the loading of all kinds of logs, including hardwood in the southeastern territory and in Florida, upon rates moving regardless of weight would approximate or exceed 70,000 pounds to 85,000 pounds per car.

XVII

The table below compares for the hauls therein specified the rates per car of the weight mentioned, for the transportation of logs upon the Cummer Scale intrastate in Florida and upon the recently published rates named per car regardless of weight as aforesaid, based upon the loading thereof reasonably to be expected; and upon the scale

prescribed by this Commission as aforesaid intrastate in Florida:

| Hauls in miles | Cummer scale | Newly reduced rates in S. E. territory | Scale fixed by I. C. C. |
|---|---|---|---|
| **Computed on Carload of 70,000 Pounds** | | | |
| 25 miles | $11.97 | $12.00 | $24.50 |
| 50 miles | 14.70 | 15.00 | 31.50 |
| 75 miles | 16.10 | 17.50 | 38.50 |
| 100 miles | 18.20 | 20.00 | 42.50 |
| [fol. 785] **Computed on Carload of 75,000 Pounds** | | | |
| 25 miles | 12.82 | 12.00 | 26.25 |
| 50 miles | 15.75 | 15.00 | 33.75 |
| 75 miles | 17.25 | 17.50 | 41.25 |
| 100 miles | 19.50 | 20.00 | 45.00 |
| **Computed on Carload of 80,000 Pounds** | | | |
| 25 miles | 13.68 | 12.00 | 28.00 |
| 50 miles | 16.80 | 15.00 | 36.00 |
| 75 miles | 18.40 | 17.50 | 44.00 |
| 100 miles | 20.80 | 20.00 | 48.00 |
| **Computed on Carload of 85,000 Pounds** | | | |
| 25 miles | 14.54 | 12.00 | 29.75 |
| 50 miles | 17.85 | 15.00 | 38.25 |
| 75 miles | 19.55 | 17.50 | 46.75 |
| 100 miles | 22.10 | 20.00 | 51.00 |

XVIII

Such newly reduced log rates are published in some instances as transit rates and in other instances as local rates. The Cummer scale of rates, while in terms a local scale is the only scale available to petitioner in connection with outbound shipments over the lines of the inbound carrier and in substance is the same as or in lieu of a transit scale, such as is accorded to other mill points generally throughout the south and southwest, as hereinbefore described. In seeking to justify its invasion of the domain of the state of Florida, The Commission relied upon and gave consideration to comparisons of the said Cummer scale with divers scales of transit and other rates effected in interstate commerce upon divers other railroads in southeastern and Mississippi Valley territories; and in several instances the very rates so compared by The Commission with the Cummer scale have been superseded in whole or in part by the newly reduced rates which The Commission has suffered and permitted lately to become effective as aforesaid.

[fol. 786] XIX

All of such changes in economic conditions, in methods of railroads in meeting the competition of other modes of

transportation, and such newly reduced log rates are matters which were not in evidence before the Commission when it rendered its decision of July 5, 1932, and unless petitioner is accorded opportunity to be heard upon such matters petitioner will be denied its right in the premises.

XX

The Commission's Appendix F scale of rates was prescribed as a scale of minimum rates, although no such issue has ever been presented to the Commission in these proceedings before it which would warrant the exercise of The Commission's authority to prescribe minimum rates, and there was no prayer in the proceedings before the Commission for the prescription of any minimum rates on any kind of traffic; and the effect of the prescription of such minimum rates on logs over the lines of the Atlantic Coast Line Railroad Company to Jacksonville is to prohibit and prevent petitioner from using the Cummer scale as a proportional scale in lieu of a transit scale, and from procuring the benefit of such newly reduced rates on logs such as have been recently established generally throughout southern and southwestern territories as hereinbefore described, where no minimum rates on logs have been prescribed by The Commission and where the railroads are left free to reduce their log rates to any extent or degree which they may deem necessary to enable them to compete with other modes of transportation.

XXI

The prescription by The Commission of the Appendix F scale of log rates on Florida intrastate traffic as minimum rates, the same as the scale of maximum reasonable inter-[fol. 787] state rates on logs from north Florida to Georgia is without parallel elsewhere in that the Commission itself, in numerous cases, has approved, and in instances prescribed rates which The Commission itself had found to be less than maximum reasonable rates, resting somewhere within the limits of the zone between minimum reasonable rates and maximum reasonable rates. The prescription of these appendix F rates for Florida intrastate traffic as minimum rates, to be the same as the maximum interstate rates for like traffic for like distances is equivalent to the denial

by the Commission of the existence of any zone of reasonableness between minimum rates and maximum rates.

The prescription of minimum rates for intrastate application in Florida, while at the same time, as has been pointed out, permitting lower interstate rates to become applicable throughout the same rate group of carriers, constitutes a new unjustifiable discrimination and undue prejudice against Florida intrastate log traffic and shippers and localities and in favor of said interstate log traffic, and the State of Florida and the Atlantic Coast Line Railroad would be powerless, under the said order of The Commission, to remove such discrimination and prejudice.

XXII

On October 8, 1932, your Petitioner filed its petition of intervention and petition for further hearing before The Commission in Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, under The Commission's Docket No. 18364, setting forth petitioner's interest [fol. 788] in the matters and things in controversy, describing the changed conditions of this new economic era and citing the recently reduced rates on logs throughout the southern and southwestern territories generally as to which this petitioner prayed The Commission for opportunity to be heard, and averring that Petitioner will show, if given such opportunity to do so upon further hearing that the Commission's report on further hearing, 186 I. C. C. 157, contains numerous erroneous statements of fact and erroneous deductions, findings and conclusions thereon. Your Petitioner, however, avers that in the usual and ordinary course of such petitions under The Commission's rules of practice and procedure, a long time may in all probability elapse before such petition may be acted upon, further hearing held, and further report thereon by The Commission issued, especially in view of the fact that The Commission's orders of July 5 and 28, 1932, in the same proceeding have [fol. 789] been enjoined by interlocutory orders of this Honorable Court and now await final determination thereon in this Court.

XXIII

Wherefore, having exhausted its administrative remedies, your petitioner herein respectfully institutes this proceeding for the purpose of annulling, vacating and setting

aside said report and orders of July 5 and July 28, 1932 as amended as aforesaid, of said Interstate Commerce Commission, and to enjoin enforcement thereof.

XXIV

And your Petitioner avers that said report and order of The Commission, as amended as aforesaid, are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful.

XXV

Said report and order, as amended as aforesaid, are unlawful for the following several reasons, among others:

(1) Because the facts of record before the Commission in said proceeding formed no constitutional ground or warrant for the exercise of or the attempted exercise of any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by said order of The Commission.

(2) Because the basic, essential and jurisdictional facts pre-requisite to the exercise of such federal power in derogation of or superior to the power and authority of the State [fol. 790] of Florida, and to the invasion of the domain of the state of Florida have not been made to appear clearly under the facts of record before The Commission.

(3) Because the basic, essential and jurisdictional facts pre-requisite to the exercise of such federal power in derogation of or superior to the power and authority of the State of Florida, and to the invasion of the domain of the State of Florida have not been made to appear clearly in the findings in The Commission's report.

(4) Because the findings of fact upon which The Commission relied to justify its order prescribing intrastate rates were not warranted and were not made to appear clearly by the evidence before the Commission.

(5) Because The Commission made no findings supported by evidence as to the essential facts as to the Florida intrastate traffic in logs and the revenue therefrom and as to the effect of the intrastate rates both as existing and prescribed

by The Commission upon the income of the Atlantic Coast Line Railroad Company, which would justify the conclusion that said order of the Commission was needed to avoid an undue burden on the revenues of said carrier and a consequent interference with the maintenance of an adequate transportation system.

(6) Because The Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate Cummer scale of rates.

(7) Because it did not and does not appear clearly that the evidence warranted a finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate Cummer scale of rates.

[fol. 791] (8) Because The Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the Appendix F scale of intrastate rates which The Commission ordered to be established.

(9) Because it does not appear clearly that the evidence warranted a finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased Appendix F scale of intrastate rates which The Commission ordered to be established.

(10) Because The Commission made no finding that the application of the existing Cummer scale of intrastate rates resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(11) Because it did not and does not appear clearly that the evidence warranted a finding that the application of the existing Cummer scale of intrastate rates resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(12) Because The Commission made no finding that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation system existed which was of such character and consequent that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(13) Because it did not and does not clearly appear that the evidence warranted a finding that any undue burden upon the carrier's revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce [fol. 792] Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(14) Because The Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce, an additional and greater amount of income, and made no finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(15) Because it did not and does not clearly appear that the evidence warranted a finding that the alteration of the intrastate rates would produce or was likely to produce, and additional and greater amount of income and it did not and does not clearly appear that the evidence warranted a finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(16) Because the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(17) Because it did not and does not clearly appear that the evidence warranted a finding of the quantity or extent of any burden upon the interstate revenues of the carrier

caused by the application of the existing Florida intrastate rate.

(18) Because the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court has declared lies with the state authority and not with the Interstate Commerce Commission.

[fol. 793] (19) Because no complaint was made and no evidence offered by the complainant of a revenue burden upon interstate commerce.

(20) Because no complaint was made and no evidence offered by the complainant before The Commission which would warrant the prescription by the Commission of minimum reasonable rates on Florida intrastate log traffic.

(21) Because it did not and does not clearly appear that the evidence warranted a finding that the minimum rates so prescribed by the Commission on Florida intrastate traffic should be the same as and no lower than the maximum reasonable interstate rates prescribed by The Commission on like traffic for like distances from north Florida points to Georgia points.

(22) Because The Commission had no evidence before it as to changed conditions in this new economic era in which the railroads generally are making such drastic reductions in rates on logs and other traffic as may be necessary to meet new low price levels and necessary to meet the competition of other kinds of carriers as a means of increasing their revenues.

(23) Because The Commission had no evidence before it as to the newly reduced rates on logs, established since the date of its order.

(24) Because The Commission had no authority to prescribe a higher rate on intrastate log traffic from the woods to the mill than the rates which it has recently permitted to become effective on like traffic for like distances in areas of similar transportation conditions as "transit" rates.

(25) Because The Commission has thereby sought to regulate internal concerns of the State of Florida as if

unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceeding before it any case or controversy of such [fol. 794] character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

(26) Because the same are not appropriate to the case and not just to the parties to be affected, they were not made following the forms of law, nor were they adapted to the end sought to be attained in said proceeding before said Interstate Commerce Commission.

(27) Because in making the same The Commission considered and gave effect to rate comparisons.

(28) Because in making the same The Commission considered and gave effect to statements of system revenue returns, and to the relation of log traffic and log revenue to total traffic and total revenue.

(29) Because in making the same The Commission considered and gave effect to system average costs.

(30) Because in making the same The Commission considered and gave effect to cost studies and other matters which were incompetent and insufficient to furnish the basis for any such report and order.

(31) Because in making the same The Commission considered and gave effect to studies of out-of-pocket costs of transportation wherein there were included charges to operating expenses not authorized by the Classification of Operating Revenues and Operating Expenses of Steam Roads as prescribed by the Interstate Commerce Commission.

(32) Because in making the same The Commission considered and gave effect to its own cost study, Appendix E of said report, which was formulated from matters dehors the record, without submitting the same in evidence and thereby deprived the parties thereto of the full and fair hearing to which they were entitled by the Act.

[fol. 795] (33) Because your petitioner has not been afforded a fair opportunity to be heard respecting the justice of the same.

(34) Because in making the same The Commission considered and gave effect to studies of transportation costs which charged to the costs of Florida intrastate log transportation the full statutory return of five and three-quarters per cent while contemporaneously the return actually earned by the carrier was far less.

(35) Because in making the same The Commission assumed in error that the rates on logs should be based upon the average expenses of hauling all traffic, carloads and less-than-carloads, regardless of all the usual factors which are taken into consideration in making different rates on different commodities.

(36) Because in making the same The Commission assumed in error that the log traffic on which the rates are limited to apply only where the railroad is freed from all terminal and station expenses, should pay a gross-ton mile share of the gross taxes, and a like share of the fictitious fair return upon the entire investment in carrier property, including freight and passenger terminals and equipment.

(37) Because the rates prescribed therein to be applicable to Florida intrastate log transportation are far in excess of all demonstrated costs, taxes, and the full statutory return of five and three-quarters per cent, and are extortionate.

(38) Because The Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have been prescribed and in which no general investigation of rate levels, whether on interstate or intrastate traffic, has been made.

(39) Because the intrastate rates prescribed in said proceeding before The Commission are broader in their scope than the interstate rates prescribed in said proceeding, and are beyond the scope of the issues raised in said proceeding.

[fol. 796] (39-a) Because the report and order of The Commission in prescribing intrastate rates in Florida relate to and are based upon a past period of time, and relate to and are based upon conditions and circumstances all of which are far different from those existing at present, and form no proper basis for any finding or conclusion as to the amount of revenue which the carrier can now reason-

ably be expected to derive under the Florida intrastate rates so prescribed, and the findings actually made are themselves expressly inapplicable to present circumstances and conditions and are improper findings of fact upon which to support said order.

(39-b) Because the matters and things set forth in the report of The Commission including the findings therein contained are matters and things alleged to have been existing and true in the year 1929 and thereabouts and form no proper predicate as regards the present, or the future, for the making of the findings, or any of them, which would be necessary to support The Commission's order.

[fol. 797] (40) Because it did not and does not clearly appear in said proceeding before The Commission that there was or is any unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(41) Because in said proceeding The Commission did not find any facts sufficient to constitute an unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(42) Because said action of The Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of this petitioner, citizen of said State of Florida, and is without any warrant of authority of or under the Constitution of the United States; and further that The Commission was and is without jurisdiction to enter its said order.

(43) Because said action of The Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

## XXVI

Petitioner avers and charges that many thousands of dollars have been invested in its mill and milling operations at Jacksonville, and that it has arranged for the transportation of logs to its mill, and for the transportation by the Atlantic Coast Line Railroad of lumber from its mill; that

the effect of the order of the Interstate Commerce Commission is to require that the rates for the transportation of such logs to petitioner's mill by the Atlantic Coast Line Railroad Company be more than doubled and that it will be impossible for petitioner to pay such rates and operate its mill; that the fear that the increased rates would become effective on September 15, 1932 has already caused the loggers to cease their operations temporarily, and [fol. 798] caused petitioner to close its mill temporarily and cease making outbound shipments of lumber; that only by reason of the existence of the interlocutory orders of this Honorable Court, enjoining the said orders of The Commission has the inbound movement of logs to petitioner's mill, the operation of the said mill, and the shipment of lumber therefrom over the lines of the Atlantic Coast Line Railroad Company been resumed; and that unless the enforcement of said order is by this Honorable Court enjoined, petitioners will be irreparably injured and damaged in their business and will be deprived of their property by the enforcement of an unlawful order of the Interstate Commerce Commission, and that the damage which will be thus inflicted upon petitioner will be irreparable and cannot be compensated for nor adequately redressed by any suit or suits at law, and petitioners have no plain, complete or adequate remedy at law available to them in the premises.

XXVII

Wherefore, your petitioner respectfully prays as follows:

(a) That process may issue against the defendants, United States of America and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and in this petition in the manner prescribed by statute in such cases made and provided.

(b) That upon the filing of this bill the Judge of this Court call to his assistance two other judges, one of whom shall be a Circuit Judge; that this Honorable Court will examine the evidence taken before said Commission and determine for itself, independently of any determination or finding of said Commission, whether or not such facts

warranting such findings, which are pre-requisite to the jurisdiction of the Commission to invade the domain of the State of Florida, have in fact been made to appear clearly by the evidence.

(c) That this Court order, adjudge and decree that the said report and order of said Interstate Commeree Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are [fol. 799] without warrant in law and null and void and that said report and order, as amended, be set aside and annulled.

(d) That this Court will grant to your petitioner herein an interlocutory, unless other interlocutory orders upon the petitions of Wilson Cypress Company and others which have been entered by this Honorable Court shall remain in effect, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

(e) That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission and permanently enjoining the enforcement thereof.

(f) That your petitioner may have such other and further relief in the premises as to the Court shall seem meet and just and as equity may require.

And your petitioner will ever pray, etc.

F. S. Buffum Company, Inc., by F. S. Buffum, President. Julian E. Fant, F. C. Hillyer, Solicitors for Complainant. F. C. Hillyer, of Counsel.

[fols. 800 & 801] *Duly sworn to by F. S. Buffum. Jurat omitted in printing.*

[fol. 801a] [File endorsement omitted.]

[fol. 802] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

STIPULATION FOR EXTENSION OF TIME FOR FILING DEFENDANTS' ANSWERS—Filed Nov. 17, 1932

Whereas the petition in the above-styled cause having been filed in this Court on October 14, 1932, praying that the order issued by the Interstate Commerce Commission on July 5, 1932, in its Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, be enjoined and annulled, and copies of said petition having been served October 15, 1932, upon the defendants United States of America and Interstate Commerce Commission, whose answers to said petition are, under the statute invoked by the petition, due to be filed within thirty days after service of said petition among them; and

Whereas, on October 21, 1932, the Interstate Commerce Commission, upon petitions duly filed with it by proper parties, entered its order reopening the proceedings in its said Docket No. 18364 and setting said proceeding for further hearing of testimony upon the matters set forth and [fol. 803] alleged in said petitions; and further suspending the operation of its order of July 5, 1932, until its further order;

It is hereby stipulated and agreed by and between counsel for the petitioner and the defendants, respectively, that, because the operation of said order of July 5, 1932, is suspended until the further order of said Commission, and no hearing or action by this Court upon the petition in this cause is deemed necessary unless and until made so by the issuance of a further order by the Commission in its said Docket No. 18364, the filing of defendants' answers to the petition this cause may be deferred until ten days after defendants have received notice from the petitioner of further proceedings in this Court upon said petition.

Dated November 8, 1932.

F. C. Hillyer, Solicitor for Petitioner. Elmer B. Collins, Special Assistant to the Attorney General, Solicitor for Defendant United States of America. J. Stanley Payne, Assistant Chief Counsel for Interstate Commerce Commission.

[fol. 804] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ORDER EXTENDING TIME FOR FILING DEFENDANTS' ANSWERS TO PETITION—Filed Nov. 17, 1932

Upon consideration of the facts set forth in the annexed stipulation between counsel for the parties to this cause, it is hereby

Ordered that the time for filing defendant's answers to the petition in this cause is hereby extended until ten days after said defendants have received notice from the petitioner of further proceedings upon said petition in this Court.

This 17th day of November, 1932.

E. Marvin Underwood, United States District Judge.

[fol. 805] [File endorsement omitted.]

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[fol. 806] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 13, 1933

Comes now the complainant in the above entitled cause, by its undersigned solicitors, and moves the Court for leave to file in the above entitled cause a certain Supplemental Bill of Complaint herewith tendered for filing; that the Supplemental Bill narrates vital events which have transpired subsequent to the filing of the original bill of complaint; that the reasons for the filing of said Supplemental Bill of Complaint and the failure to include in the Original Bill of Complaint herein the matters and things set forth in said Supplemental Bill are specified in said Supplemental Bill; and that a copy of said Supplemental Bill of Complaint is hereto attached and made a part hereof.

Julian E. Fant, F. C. Hillyer, Solicitors for Complainant. F. C. Hillyer, of Counsel.

[fol. 807] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ORDER GRANTING LEAVE TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 13, 1933

This cause coming on this day on motion of F. S. Buffum Company, Incorporated, complainant in the above entitled cause that leave be granted to file its Supplemental Bill of Complaint in the above entitled cause, as specifically set forth in said motion and the Court being fully advised in the premises

It is ordered by the Court that leave be and the same is hereby given to said complainant to file its Supplemental Bill of Complaint in the above entitled cause by filing the copy of said Supplemental Bill of Complaint attached to said motion for such leave.

This 13 day of February, 1933.

E. Marvin Underwood, United States District Judge.

[fol. 808] [File endorsement omitted.]

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[fol. 809] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 13, 1933

To the Honorable Judges of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

Complainant F. S. Buffum Company, Incorporated, a corporation, by its undersigned solicitors, with leave of Court first had and obtained, brings this its Supplemental Bill of Complaint against United States of America and Interstate Commerce Commission, defendants. Thereupon your orator complains and says:

1. That heretofore, to-wit, on October 14, 1932 your orator filed in this cause its bill of complaint hereafter called "original bill" against United States of America and Interstate Commerce Commission, defendants herein, wherein and whereby complainant sought to enjoin, set aside, suspend and annul that part of the order entered by said Interstate Commerce Commission dated July 5, 1932, as amended July 28, 1932, wherein and whereby said Interstate Commission hereinafter called "Commission" attempted to invade the domain of the State of Florida and to disestablish the scale of lawful rates in force and effect for the transportation of logs, except walnut, cheery and cedar, in carloads, minimum weight 50,000 pounds, excess in proportion [fol. 810] (herein called the Cummer scale), upon the lines of the Atlantic Coast Line Railroad Company in intrastate commerce in Florida, and to require said Atlantic Coast Line Railroad Company, a common carrier by railroad, and subject to the jurisdiction and regulation of the State of Florida, to establish, put in force and maintain a certain other scale of rates for the transportation of such logs prescribed in and by the terms of said order entered in a proceeding before the Commission known as its Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, which scale is hereinafter called the "Commission's scale."

That prior to September 15, 1932, the date on which the said order of the Commission was to become effective, this Court did, on September 14, 1932, make and enter its order in a proceeding entitled Wilson Cypress Company, et al., vs. United States of America, et al., in Equity No. 691, wherein and whereby the said order of the Interstate Commerce Commission and the effect thereof was duly stayed until further order of the Court, but not to exceed sixty days from the date thereof; and that no final judgment or decree of this Court has been entered in nor have any issues in the original suit of Wilson Cypress Company and others, in Equity No. 691, or in the original suit of F. S. Buffum Company, Incorporated, in Equity No. 695, been determined by this Court.

That on October 21, 1932, the Commission, upon petitions of complainant and other proper parties duly filed, entered its order reopening the proceedings in its said Docket No. 18364 and assigned said proceeding for further hearing for

the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with [fol. 811] respect to the Florida intrastate log rates of Atlantic Coast Line Railroad Company, and further suspending the operation of its order of July 5, 1932, as amended July 28, 1932, until its further order.

That on November 21 and 22, 1932, said further hearing before the Commission under its docket No. 18364 was held; and thereafter, to-wit, on January 9, 1933, the Commission in its second report on further hearing under its said docket No. 18364, affirmed all of the findings in its report on further hearing, and by its order of January 9, 1933, in the said proceeding, as amended by its order of January 19, 1933, vacated its order of October 21, 1932, as of February 25, 1933, and ordered that thereafter the aforesaid order of July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the Commission. A copy of said second report on further hearing and order of January 9, 1933, duly certified by the Secretary of the Commission, and a copy of its amendatory order dated January 19, 1933, are attached hereto and marked Exhibits A and B respectively, and made a part hereof.

That on or about January 21, 1933, complainant herein filed its petition with the Commission seeking postponement of its order in docket 18364, praying for further hearing and alleging among other things that at such hearing no new, added, basic, essential and jurisdictional facts were adduced which would warrant such exercise of federal power over intrastate log rates in Florida; that the Commission's second report upon further hearing in its No. 18364 contains vital omissions and vital errors of fact; that the Commission's conclusions are unsupported by the facts, contrary to the evidence and unsupported by the findings. A copy of said petition of complainant is attached hereto as Exhibit C, and made a part hereof; and said petition filed [fol. 812] by your orator before said Commission has been denied on or about February 8, 1933.

2. That your orator avers all and singular the matters and things averred in and by said original bill of complaint, and in addition thereto avers the following:

(a) That said Interstate Commerce Commission purported to justify its power to prescribe such intrastate rates upon no ground except upon the ground asserted by said Commission in its report of July 5, 1932, that the Cummer scale constituted an unjust discrimination against interstate commerce from a revenue standpoint.

(b) That at the further hearing before the Commission on November 21 and 22, 1932, no new, added, basic essential and jurisdictional facts were adduced which would support the Commission's exercise of federal power over intrastate log traffic and rates of the Atlantic Coast Line Railroad Company thereon; that no such essential and jurisdictional facts are of record upon such rehearing; and that no such essential and jurisdictional facts have been found by the Commission in its second report upon further hearing as decided January 9, 1933.

(c) That at the further hearing before the Commission on November 21 and 22, 1932, evidence was adduced by complainant herein which shows that newly established reduced rates on logs are now in effect generally throughout the lumber producing regions of the south and southwest over many and varied lines of railroad between, from and to many points of production and manufacture, which new rates are in most instances about the same as or equivalent to the rates for like distances under the Cummer scale, and about one-half the rates prescribed by the Interstate Commerce Commission as minimum rates for application on [fol. 813] Florida intrastate traffic over the Atlantic Coast Line Railroad; and that many of such new reduced rates in the schedules of many lines apply strictly as local rates, both on intrastate traffic and interstate traffic, and, in numerous instances, apply generally from all points on the lines of certain railroads within various states; that the charges lawfully assessed on shipments of logs to complainant's mill over the Seaboard Air Line were substantially less than the charges which would have accrued on basis of the rates prescribed by the Interstate Commerce Commission for application over the Atlantic Coast Line.

(d) That reduced rates on logs have been established by the Florida East Coast Railway which are substantially less than the Commission's scale; and that the Louisville & Nashville Railroad Company has established the new scale of reduced rates on logs between all points on its line, including points in West Florida, in its schedule filed with the Commission, effective January 27, 1933, under its tariff number I. C. C. A-16022, supplement 19, which scale is substantially the same as the scales of reduced rates now in effect over many rail lines throughout the south and southwest, all of which changes in log rates create a new, low and different general level of log rates from that which existed at the time of the first hearing before the Commission under its docket No. 18364.

(e) That complainant by reason of the impending withdrawal on February 25, 1933 of the said Cummer scale and the substitution therefor of the Commission's scale of rates on logs in intrastate traffic in Florida over the Atlantic Coast Line Railroad under the said orders of the Commission, is again threatened with loss of business in that the log-cutters who have been and are now shipping logs from [fol. 814] points in Florida over the Atlantic Coast Line Railroad to complainant at its Jacksonville mill, will discontinue cutting and shipping such logs to complainant if and when the said Cummer scale of rates is withdrawn. In order to insure, even temporarily, the continuation of its supply of such logs complainant has been, by the said orders of the Commission, required to enter into an agreement with its log-cutters to give them at least one week's notice of the impending change in such log rates so as to protect the said log-cutters from the increases in freight charges which would result if and when the said Cummer scale should be withdrawn and substituted by the Commission's scale of log rates; and that your orator would suffer loss of business and irreparable injury if such changes in such log rates should occur, as more fully appears in the affidavit of F. S. Buffum, which affidavit is attached hereto and marked Exhibit D and made a part hereof.

3. That your orator by the exercise of no reasonable amount of diligence could have discovered or presented to this Court the new matters and things contained in Paragraph 2, Sub Paragraphs (b), (c), (d) and (e) of the sup-

plemental bill of complaint, and at the time of filing the original bill of complaint herein, and, since such discovery, has acted diligently in the preparation and filing of said petition before the Commission (Exhibit C hereto) and the preparation and filing of this supplemental bill of complaint.

4. That because of the matters and things set forth in the original bill of complaint, which is hereby affirmed and re-asserted, and the matters and things herein set forth the said orders of the Commission dated July 5, 1932, as amended on various dates as aforesaid to become effective February 25, 1933, were and are arbitrary, unreasonable, beyond the power of said Interstate Commerce Commission and wholly invalid and unlawful.

[fol. 815] Forasmuch, therefore, as your orator is without remedy save in a court of equity, your orator prays as follows:

1. That United States of America and Interstate Commerce Commission, and each of them, be required to make full, true and perfect answer to this Supplemental Bill of Complaint, but not under oath, answer under oath being hereby expressly waived.

2. That the order of this Court staying the operation and effect of the said orders of the Commission be re-entered and continued in force and effect until the further order of this Court.

(a) That this Court order, adjudge and decree that the said reports and orders of said Interstate Commerce Commission dated July 5, 1932, as amended, and January 9, 1933, as amended, are beyond the authority of the Commission, and are without warrant in law and are arbitrary, invalid, null and void; and that said reports and orders as amended be enjoined, annulled and set aside.

(b) That this Court allow a temporary stay of the operation of the said orders of the said Commission, as amended, pending the application for the injunction herein sought.

(c) That this Court will grant to your orator an interlocutory order setting aside and enjoining the enforcement of said orders of July 5, 1932 and January 9, 1933, as

amended, of the Commission and that said interlocutory [fol. 816] injunction be continued in force until the further order of this Court.

(d) That upon the coming in of this cause this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said orders, as amended, of said Commission, and permanently enjoining the enforcement thereof.

4. That your orator have such other and further relief in the premises as shall be consonant with equity and the nature of the case of your orator may require.

And your orator will ever pray, etc.,

F. S. Buffum Company, Inc., F. S. Buffum, President, Mrs. M. L. Jones, Secretary. Julian E. Fant, F. C. Hillyer, Solicitors for Complainant. F. C. Hillyer, of Counsel. (Seal F. S. Buffum Company, Inc., Jacksonville, Florida.)

[fol. 817] *Duly sworn to by F. S. Buffum. Jurat omitted in printing.*

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[fols. 818-836] EXHIBIT "A"

Second Report of the Commission on Further Hearing omitted, printed side page 418, ante.

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[fols. 837 & 838] Exhibit "B" omitted, printed side page 437, ante.

[fol. 839] EXHIBIT "C" TO SUPPLEMENTAL BILL

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

PETITION FOR POSTPONEMENT OF DATE OF ORDER, FOR FURTHER HEARING, AND FOR RECONSIDERATION

To the Interstate Commerce Commission:

I. Comes now your petitioner, F. S. Buffum Company, Incorporated, intervener in the above entitled proceeding, and prays that the Commission postpone the effective date (February 11, 1933) named in its order of January 9, 1933, which was issued in connection with the Commission's report on further hearing — I. C. C. —, decided January 9, 1933. The original opinion is reported in 146 I. C. C. 717, and the opinion upon further hearing in 186 I. C. C. 157.

Your Petitioner further prays that this proceeding be re-opened for further hearing, to permit this intervener a full hearing upon matters alleged in its petition of intervention and matters which intervener offered to prove and which the Commission's Attorney-Examiner excluded at the Jacksonville hearing, November 21 and 22, 1932.

Your Petitioner further prays that the Commission reconsider its decision of January 9, 1933 upon facts of record which are omitted from the opinion, upon facts of [fol. 840] record which prove that certain important conclusions of fact, stated in the opinion, are erroneous.

II. Petitioner avers that at the hearing in Jacksonville on November 21 and 22, 1932, no new, added, basic, essential and jurisdictional facts were adduced which would warrant the exercise of federal power over intrastate log rates of defendant in Florida; that no such essential and jurisdictional facts are of record; and that no such essential and jurisdictional facts have been found by the Commission; that a number of primary findings of the Commission are not warranted by the evidence; and that the findings do not support the conclusion and order of the Commission.

III. Prior to the hearing of November 21 and 22, 1932, Petitioner filed its bill of complaint in the United States District Court for the Northern District of Georgia, Atlanta Division, in equity No. 695, to enjoin, set aside, suspend and annul the order entered in this proceeding which is to be re-instated effective February 11, 1933 by the Commission's order of January 9, 1933. Hearing upon the bill was postponed by the Court until ten days after defendants therein have received notice from your Petitioner herein of further proceedings in that court upon said petition, as stipulated by solicitors for Petitioner therein for defendant United States of America and for Interstate Commerce Commission. In view of such stipulation, and the shortness of time intervening between the date of the Commission's decision of January 9, 1933, and the effec- [fol. 841] tive date of its orders, viz., February 11, 1933, Petitioner avers that a postponement of said effective date is necessary to the ends of justice in order that the Commission may have sufficient time for careful consideration of matters and things set forth in this petition, serve notice of its action thereon, and still leave sufficient time for arrangement of, and for service of notice to the parties of a hearing upon the bill of complaint in the District Court in accordance with the said stipulation. Your Petitioner avers that the prayer for postponement of the effective date of the Commission's order is not for purposes of delay.

Petitioner therefore prays that the Commission postpone the effective date of its order until April 11, 1933, or until after further hearing if further hearing is granted.

IV. Petitioner avers, in support of its prayer for further hearing, that, at the hearing in Jacksonville on November 21 and 22, 1932, the Commission's presiding Attorney-Examiner excluded testimony proffered by this Intervener bearing upon certain issues raised in its petition of intervention, thereby denying to petitioner a full hearing, to which petitioner is entitled under the Interstate Commerce Act.

Petitioner alleged that the use of the Cummer scale into its Jacksonville mill is similar to the use of newly established local, proportional and transit scales of rates on logs over various lines in southern and southwestern territories [fol. 842] to other competing mills; that the defendant At-

lantic Coast Line Railroad Company derives substantia revenues on outbound lumber traffic from petitioner's mil to far distant northern markets, just as it would if th Cummer scale were applicable as a proportional or transi scale; and that the presence of other similar scales on log to competing mill points in the south and southwest, an the withdrawal of the Cummer scale under the Commis sion's order would subject petitioner to undue prejudic and disadvantage and give undue preference and advan tage to petitioner's competitors in South Carolina, Ala bama, Mississippi and Tennessee; and that the Commis sion's order would result in loss of revenue to the Atlanti Coast Line not only on inbound log traffic but also on out bound lumber traffic. The Attorney-Examiner receive evidence of defendant with respect to the transit rates else where, and considered "the moral obligation" relied upo by the railroads where the newly reduced rates were estab lished as local rates to regain inbound log traffic and out bound lumber traffic, but he rejected intervener's evidenc of like conditions at intervener's mill at Jacksonville. Ex ceptions to his rulings were made by intervener and note of record.

Attention is directed to the fact that this issue, raise by intervener's petition, related to a situation which woul arise from the operation of the Commission's order, an not to a situation which now exists. Such preference an prejudice were alleged to arise only if and when the Com mission required the elimination of the Cummer scale o [fol. 843] rates on logs to intervener's mill. It is no de fense, then, to say that this issue was not raised by th original complaint. The issue only arises under change conditions in contemplation of the Commission's announce exercise of federal power over Florida intrastate rates The discussion in connection with the Examiner's ruling and the proffer of testimony, appear at pages 1529 to 153 of the transcript.

V. Petitioner further desires opportunity to adduce evi dence, in support of the allegation contained in its petitio of intervention, that there are serious mistakes, illogica theories, and unwarranted assumptions underlying the so called accounting evidence, and formula employed by th Commission in its decision of July 5, 1932, reported in 18 I. C. C. 157, which mistakes and formula formed the basi

of the Commission's erroneous conclusion that the Cummer scale of log rates cast a burden on interstate traffic. At the hearing held November 21 and 22 petitioner was denied the right to adduce evidence in support of such allegations.

VI. Petitioner avers that there are numerous material facts omitted from the Commission's report of January 9, 1933; that numerous facts are partially stated, or stated with such imperfection as to cast an entirely erroneous color or impression as to such facts, contrary to the plain import and effect of the complete context of the evidence; that other important facts are erroneously stated; and that important primary findings and conclusions of the Commission which are based upon these omissions and errors are unsupported by and contrary to the evidence.

[fol. 844] (a) On sheet 3 of the Commission's report of January 9, 1933 is the statement that the newly established reduced rates "expire by limitation December 31, 1932", and on sheet 4, that "these rates are published to expire in one year", etc. whereas the fact is that the carriers have made arrangements to continue these reduced rates beyond the original expiration date. The testimony is that the railroad's Bureau "has assented to a proposal to extend the effective dates of those rates one year beyond the expiration date in that territory" (Record, page 1456). The effect of this omission of fact is to create the erroneous impression that on the date of the Commission's decision, January 9, 1933, many of these reduced rates had expired and the old rates had been restored on December 31, 1932, contrary to the truth. The testimony shows that "the new reduced rates on logs will continue to apply within the Southwestern territory throughout the year 1933" (Record, page 1457).

(b) On sheet 5 of the Commission's report of January 9, 1933 is the statement that "all of these (new reduced rates) apply in the western portion of southern territory and none in the eastern portion". This statement is misleading and incorrect. The evidence shows that the reduced rates apply from stations in Georgia (1448), "between all stations in Florida on the St. L. & S. F. Railroad" (Exhibit No. 134, middle of the sheet), and that reduced rates on piling and timber, lower than the Cummer

scale, have been recently established from South Carolina [fol. 845] points to Charleston, S. C. (Record 1464, 1465, 1467). Intervener desires to prove, further, that the new reduced rates have been recently established generally over the lines of the Louisville & Nashville R. R. (L. & N. I. C. C. A-16022, Supplement 10, January 27, 1933), and that reduced rates on logs substantially lower than the Commission's prescribed scale, have been established over the lines of the Florida East Coast Railway in Florida. The evidence also shows that the charges paid on logs moved over the Seaboard Air Line in Florida are substantially less than they would have been under the log-rate scale prescribed by the Commission (Record 1798, $22.10 per car S. A. L. $30.00 per car I. C. C.). It is clear that the omission of such facts leads to the erroneous statement that "all of these rates apply in the western portion of southern territory and none in the eastern portion".

(c) On sheets 4, 5, 6 and 7, the report minimizes the fact that these new rates apply in wholesale over a very broad area which embraces most of the lumber producing regions of the south and southwest (1450), with the exception of the area in which the Atlantic Coast Line, defendant here, dominates the log rates, either directly or through control of its affiliated lines. Intervener challenges anyone to prove that there are any substantial number of hardwood mills in the southeast or southern territory today (which do not own logging railroads) which have not the benefit of reduced rates on logs substantially less than the Commission-prescribed scale. The Commission's report seems to avoid any reference to the colored map which [fol. 846] was submitted in evidence and which shows most graphically the wholesale and general southwide reductions in log rates.

(d) The assertion, that the Commission's statement of facts on this point is discolored, can be further proven upon the face of the report itself. On sheet 5 is the statement in reference to the new reduced rates, that "All except those of the N. C. & St. L. and some of those of the Southern apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound". This statement is directly contrary to the evidence. The record shows that many of these new tariffs

are applicable on strictly local shipments of logs (1450-1466). Exhibit 161 shows a list of twenty new tariffs of various railroads which apply the new reduced log rates locally, as signified by the symbol "L". The application of a number of these tariffs was specifically explained by an expert witness and there is no evidence which controverts his testimony or the plain wording of the tariffs themselves.

On page 5 of the Commission's report is a partial statement of the application of the new tariffs which is misleading. The report omits the stations from which the new rates apply. This omission again minimizes the effect of the widespread application of the new reduced rates. For example, the Missouri Pacific tariffs apply between all Louisiana points, all Missouri points, all Arkansas points, and between all points in Arkansas, Louisiana, Missouri, Oklahoma and Texas. The St. L. S. W. tariffs [fol. 847] apply from all stations in Tennessee and Mississippi, between all stations in Missouri, from all stations in Arkansas, between stations in Arkansas and Missouri, between all stations in Alabama, between all stations in Alabama and Florida or Mississippi, between all stations in Mississippi and between all stations in Florida, Missouri and Mississippi. The G. M. & N., C. R. I. & P. and St. L. S. W. tariffs all apply from or between all stations on their lines. See exhibit 134. In like manner, practically all of the tariffs explained on exhibits 135, 136, 137 apply the new rates from all stations on the lines shown. The effect of this omission of these facts from the Commission's report is to cast the erroneous impression that the new rates apply only from or to a very few mill points. This is directly contrary to the evidence.

(e) On page 6 is the statement that

"It should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement of the manufactured products, except in the case of the Nashville, Chattanooga & St. Louis and in some instances, the Southern."

This finding makes more glaring the ruling under which intervener was prohibited from submitting it proof that the

Atlantic Coast Line received practically all of the out bound movement of lumber from petitioner's mill, which could possibly move over that line, and that the proportion of its outbound movement of lumber which so moved was much greater than the tonnage which petitioner could have used under transit billing. Attention has been directed, hereinbefore, to the error in the above quoted statement as to the N. C. & S. T. L. and the Southern. Some twenty [fol. 848] of the new tariffs apply locally. Therefore in both respects the above-quoted sentence is clearly erroneous.

(f) What has just been said, is true in like manner of the statement on sheet 7. that;

"While these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

This statement shows again the unfairness of the exclusion of the intervener's evidence on this subject, and the discoloration of the report by its failure to state correctly the facts concerning the twenty tariffs of local application.

(g) In this connection the attention of the Commission is directed to the omission from the decision of any explanation of the issue raised by intervener's petition of intervention—that there could be no justification for the prescription of the Commission's scale of minimum rates in Florida on a basis twice as high as the newly established local, proportional and transit rates on logs throughout the south and southwest generally. The Commission, in substance, dismisses the effect of the new rates by the mere explanation that they are "experimental." The Commission fails to explain any theory of fact or law upon which it interferes with Florida intrastate rates and prescribes minimum rates in Florida twice the level of new rates on logs in West Florida, from Georgia, and within and throughout the states of Alabama, Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, Texas and Missouri. What different revenue test is the Commission applying [fol. 849] to these Florida intrastate rates than it applies to these "experimental rates"? The decision of the Com-

mission is significantly silent upon this important question.

(g) On sheet 9 is the statement that:

"Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less."

This statement is misleading, due to its inaccuracy. The evidence proves beyond question that there has been a wholesale and widespread diversion of log traffic from the railroads to the trucks throughout the state of Florida; and that truck competition has been as strong as or more acute in Florida than elsewhere throughout the South. The record proves beyond question that there is as much need of reduced rates on logs in Florida to meet truck competition as there is in any other Southern state. The evidence further shows that the same kind of truck movements are common in Florida as elsewhere in the South where mills are in operation. There is no evidence to support the direct inference and implication in the above-quoted sentence to the effect that the trucks haul only to the small mills and not to the larger mills. The evidence of record proves without question that there has been a large diversion of log traffic from railroads to trucks, especially during this Cummer-scale litigation in Florida.

(h) The Commission's report with respect to the effect of the Cummer scale upon the rail tonnage and revenues at the Buffum mill in Jacksonville is so strongly distorted [fol. 850] and highly discolored that it would be impossible for a reader of the decision to gain any adequate conception of this intervener's evidence. The record shows without dispute that when the Cummer scale was lifted the log movement to the Buffum mill was almost entirely by truck and water, with the exception of some rail shipments from points close by where the charges were relatively small; that after the Cummer scale was restored the A. C. L. rail movement to the Buffum mill increased about 670 per cent; that the threatened cancellation of the Cummer scale under the Commission's order on September 15, 1932, caused a stoppage of the rail movement of logs, and a short discontinuation of the operations of the mill until

the effect of the injunction of the United States District Court was manifested; and that the cancellation of the Cummer scale, under the Commission's order, would have the undoubted effect of practically stopping the A. C. L.'s log traffic and log revenue to this mill. This evidence is uncontroverted. The failure of the Commission's report to make suitable findings in accord with the plain facts of record with respect to the Buffum mill is astonishing.

(i) On Sheet 12 of the Commission's decision is the statement that:

"The record does not show that any of the other logs shown to have moved by truck in Florida could have moved over defendant's lines."

This statement is erroneous, without foundation, and contrary to the plain facts of record. The statement is squarely at variance with the facts proved without dispute throughout the hearing of November 21 and 22.

[fol. 851] (j) The following statement, on sheet 12 of the report is distorted and inaccurate:

"The logs that moved by truck to these two companies (at Jacksonville) which the record shows could have moved over defendant's lines represents an average of approximately 35 carloads a month and as indicated above they moved for relatively short distances."

The evidence shows that during the first 10 months of 1932 the truck movement to the Buffum mill alone averaged the equivalent of 84.8 cars per month; and that the effect of the withdrawal of the Cummer scale will be to enlarge the area of truck movements and eliminate rail movements.

(k) The following statement on sheet 13 of the report is erroneous:

"The movement of logs by truck into the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks."

The record shows that there has been a large movement of logs by truck in Florida, particularly since the Cummer-scale litigation has been in progress. There is no basis

upon this record for the implied inference that truck movements are less in Florida than in Alabama, and other states where the reduced rates are in effect. On the contrary, the plain deduction from the evidence here is that there is a larger movement of logs by trucks in Florida than elsewhere in the South. The above-quoted statement of the Commission is misleading in that this case does not present any application for reductions in rates to meet truck competition. The question here is whether the Commission should exert any federal power to compel this defendant to cancel the Cummer scale and put into effect the Commission's scale which is about twice as high as the new log [fol. 852] rates in effect throughout a widespread area. This is an entirely different question. There was no application here to reduce the Cummer scale to meet truck competition. The evidence shows that the Commission's scale, if substituted for the Cummer scale, will drive all of the existing log traffic away from the Coast Line, especially log traffiic to the Buffum mill, thereby resulting in loss of revenue to this defendant. The above-quoted finding in the Commission's report is erroneous and directly contrary to the facts of record.

(l) The finding on sheet 16 of the Commission's report that:

"There is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles",

is contrary to the evidence. The record shows that truck competition has taken away from the Coast Line a large proportion of the Florida intrastate log traffic, many mills having purchased their own trucks while the Cummer scale was withdrawn, and many of them now using trucks over highways which parallel practically all of the lines of the Coast Line in Florida between timber areas and mills.

(m) The Commission's report, pages 16 to 18, inclusive affirms the previous findings with respect to similarity in transportation conditions, thereby ignoring completely the evidence of intervener's witnesses, Buffum and True, who proved that the transportation and loading conditions with respect to log traffic over defendant's lines to Jacksonville is generally over main lines, whereas at other southern mill [fol. 853] points the log traffic usually originates on branch

lines; that the land over which defendant's lines run in Florida to Jacksonville is level, and free from the swampy regions which characterize the hauls to Memphis, free from the grades and curves incident to the mountainous region around Chattanooga, and more favorable than the hilly country around Montgomery, Alabama, and free from the soil-slides which have occurred on railroads in the Laurel, Miss. area. All of this evidence is omitted from the report, thereby casting an entirely erroneous and incorrect impression as to the favorable transportation conditions for log traffic over the Coast Line to Jacksonville.

(n) The Commission's report, sheet 17, specifically mentions the one extreme and highest Florida arbitrary for Florida hauls south of Jacksonville which were prescribed in two cases, and studiously omits the mention of cases in which much smaller arbitraries have been prescribed, and the Fertilizer Case, 113 I. C. C. 389 in which the level prescribed interstate in the south was also prescribed for peninsula Florida without any arbitraries whatsoever. The mention of two extreme cases and the omission of all the other cases on this subject, even if this subject were relevant here to log traffic, distorts and discolors the context of the evidence adduced in this case.

(o) On sheet 18 the Commission finds that:

"The re-established substantially lower Cummer scale has had no effect on the volume of rail movement."

This statement is directly contrary to the proven facts of [fol. 854] record, and there is no evidence whatsoever to support it. Exhibit No. 141 shows 47 cars of logs moved over the A. C. L. to Buffum's mill in the period June-October, 1930 when the Cummer scale was withdrawn, and during the same months of 1932 when the Cummer scale was in effect 342 cars moved over the A. C. L. During the month of May, 1932, when the Cummer scale was in effect, 107 cars moved over the A. C. L. to the Buffum mill, which was about the equal of the movement from June 1930 through February 1931, prior to the restoration of the Crummer scale. The effect of the Cummer scale, in the monthly comparable periods of 1930 and 1932, June to October, inclusive, was to increase the Coast Line's rail movement by about six hundred and seventy per cent. In other words the movement to the Buffum mill under the

Cummer scale for this period of 1932 was seven hundred seventy per cent of the movement for the same period of 1930. This period includes the month of September 1932, when the movement dropped down due to the expectation that the Cummer scale would be withdrawn September 15, under the I. C. C. order. In spite of this remarkable showing the Commission's report finds (erroneously) that the reestablishment of the Cummer scale "has had no effect on the volume of rail movement". This point is of vital importance in this case especially to the Buffum mill. The findings on such facts are directly contrary to the record and without evidence to support them.

(p) One of the most glaring omissions from the Commission's report is the failure to show and illustrate the numerous tables of comparisons of the revenues per car [fol. 855] under the Cummer scale, the Commission's scale, and the newly reduced rate scales on logs which have been established generally throughout the South and southwest. The effect of these omissions is to minimize the effect of the newly established reduced rates. The Commission emphasized the old log rate scales in its first report. In this latest report it minimizes the importance of the same kind of comparisons under the newly reduced rates.

Further recital in detail of the errors, omissions, and discolorations of the facts of record is deemed unnecessary. The report as a whole is apparently framed in the attitude of a litigant, attempt to uphold a preconceived conclusion, contrary to judicial attitude which one is accustomed to find in the Commission's treatment of facts.

Wherefore petitioner prays that the Commission postpone the effective date of its order of January 19, 1933, July 5, 1932 and July 28, 1932; and re-open the Case for Further Hearing, and Reconsideration.

F. S. Buffum Company, Inc., by F. S. Buffum, President. Julian E. Fant and F. C. Hillyer, of Counsel.

STATE OF FLORIDA,
County of Duval, ss:

Before me, a notary public in and for the state of Florida at large, personally appeared E. C. Green, witness on behalf of F. S. Buffum Co., Inc., who being by me first duly sworn deposeth and saith that he has read the foregoing

petition and that he believes that the facts stated therein are true.

——— ———, Notary Public.

[fol. 856] EXHIBIT "D" TO SUPPLEMENTAL BILL

Affidavit

STATE OF FLORIDA,
County of Duval, ss:

Before me, a notary public in and for the state of Florida at large, personally appeared F. S. Buffum, who being by me first duly sworn deposes and on oath says: That he is President of F. S. Buffum Company, Incorporated, a Florida corporation; that said F. S. Buffum Company, Incorporated, now operates and since June 1930 has operated a lumber mill at Jacksonville, Florida; that the supply of logs for such milling operations, prior to the reinstatement of the Cummer scale of log rates was transported principally by motor truck and to a minor extent by water; that after the reinstatement of the Cummer scale of log rates in the spring of the year 1931 a substantial and important part of its supply of logs has been transported over the Atlantic Coast Line Railroad Company from points in Florida to the Buffum mill at Jacksonville and that such rail movement has enabled the said mill to maintain full time operations due to the increased supply of logs derived from such source; that soon after the receipt of the decision and order of the Interstate Commerce Commission, to-wit, on or about the 11th of January, 1933, the cutters and shippers of logs over the Atlantic Coast Line Railroad to the Buffum mill, due to the threatened cancelation of the Cummer scale of log rates and the establishment of the Commission's prescribed scale in lieu thereof as of February 11, 1933, notified the F. S. Buffum Company that they would cease the cutting of logs prior to February 11 because they would not be able to pay the increased freight charges and that after consultation with them, in order to insure even temporarily, the continuation of its supply of logs, affiant, on behalf of the F. S. Buffum Company, Incorporated, was required to give one week's notice to the log-cutters prior to such [fol. 857] change in log rates in order that the cutters might have sufficient time in which to load the logs which had been

cut and ship them over the Atlantic Coast Line prior to such change in rates, and that in the event such notice by the Buffum Company of such change is not so given in due time, the Buffum Company would have to assume the difference in the transportation charges under the Cummer scale and the higher rates which might be charged pursuant to the orders of the Interstate Commerce Commission; and that if such rates are so increased the supply of logs to the Buffum mill will be thereby stopped by the Buffum Company as soon as such change becomes effective, due to its inability to absorb such higher transportation charges in its cost of manufacture; and that in the event such increase is made in such log rates the Buffum mill will in the future have its logs transported by truck and some by water, and none over the rails of the Atlantic Coast Line Railroad Company; that due to the reinstatement of the Cummer scale in the year 1931 the rail shipments of logs over the Atlantic Coast Line Railroad increased many fold, and that the withdrawal of the Cummer scale would result in the cessation of the transportation of logs over the Atlantic Coast Line Railroad from points in Florida to the Buffum mill at Jacksonville, with irreparable loss and injury to F. S. Buffum Company, Incorporated.

(Signed) F. S. Buffum.

Sworn to and subscribed before me this 8th day of February, 1933. E. M. Winter, Notary Public. My Commission expires Dec. 18, 1934. (Seal of E. M. Winter, Notary Public, State of Florida.)

[fol. 858] [File endorsement omitted.]

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[fol. 859] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 695—Equity

AFFIDAVIT OF E. C. GREEN—Filed Feb. 24, 1933

STATE OF FLORIDA,
County of Duval, ss:

Before me, a notary public in and for the state of Florida at large, personally appeared E. C. Green, who being by me first duly sworn deposes and on oath says: That he is

Manager of the Jacksonville Traffic Bureau, Inc., a Florida corporation, maintained and supported jointly by the Jacksonville Chamber of Commerce and the municipality of Jacksonville for the purpose of handling transportation matters, rates and charges for the business interests of Jacksonville or any citizens thereof; that he has had seventeen years experience in railway freight traffic work engaged in handling transportation matters, rates, rules and regulations in the employ of the Southern Railway Company and the Georgia, Southern & Florida Railway Company at Macon, Ga., and Jacksonville, Fla.; that he was employed for approximately two years by the American Railway Association and the United States Railroad Administration handling transportation by both freight and passenger trains into and out of various military camps in Georgia and Tennessee; that for the past ten years he has been employed by the Jacksonville Traffic Bureau as rate clerk, assistant manager and manager of that organization; that he is familiar with the construction of freight tariffs and interpretation; and that he is qualified to interpret the rules, regulations, rates and transportation charges contained in railway freight tariffs;

That there is attached hereto and made a part hereof photostat copies of several freight tariffs on file with the Mississippi Railroad Commission located in the new state capitol building at Jackson, Miss., and at the bottom of the [fol. 860] freight tariffs is an official certificate of the Mississippi Railroad Commission dated February 16 1933, signed by J. W. Williams, secretary, and properly attested to by the official seal of the Mississippi Railroad Commission certifying that these tariffs are true and correct copies of the indicated portions of the tariffs as duly filed with the Mississippi Railroad Commission; that these photostat copies will be explained in the order in which they are bound together beginning at the top; and that his interpretation of the tariffs is as follows:

The first three sheets are respectively the title page of Mississippi Central Railroad Company 780-E, issued August 10, 1928, effective August 20, 1928, indicating that the tariff contains local and proportional rates applying on classes and commodities between stations on the Mississippi Central Railroad; page 4 of the tariff showing a geographical list of stations and distances between all stations on the railroad; page 24 of the tariff containing in items

265 and 267 at the bottom of the page rates on hardwood logs in carload lots from eleven stations in Mississippi to Bude, Miss., and Hattiesburg, Miss., for manufacture and reshipment. These rates are tabulated below showing the distance for which each rate is applied. The rates apply only on shipments of five cars or more moving in one day from the same consignor to the same consignee and apply per car regardless of weight of the logs on the car.

| | | | Distance | Rate per car |
|---|---|---|---|---|
| Brassfield, Miss. | to | Bude, Miss | 79 miles | 15.00 |
| Birch | " | " | 61 " | 15.00 |
| Carson | " | " | 74 " | 15.00 |
| Clyde | " | " | 101 " | 20.00 |
| Epley | " | " | 98 " | 20.00 |
| Prentiss | " | " | 67 " | 15.00 |
| Silver Creek | " | " | 58 " | 15.00 |
| Sumrall | " | " | 93 " | 20.00 |
| Wanilla | " | " | 59 " | 15.00 |
| Whitsand | " | " | 64 " | 15.00 |
| Wanilla | " | Hattiesburg, Miss | 63 " | 15.00 |

[fol. 861] The above $15.00 rate per car applies from distances ranging from 61 miles to 79 miles and the $20.00 rate per car applies for distances ranging from 93 miles to 101 miles.

The next two photostat copies are respectively the title page of supplement No. 5 to I. C. C. 9642 of St. Louis-San Francisco Railway Company freight tariff No. 2173-0, publishing rates on forest products, carloads from points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma and Tennessee to Fayette Jct., Fayetteville, Ft. Smith, Ark., and Poteau, Okla.; and page 4 of supplement 5 to the same tariff, publishing the following distance scale of rates from stations on the St. Louis-San Francisco Railway in Arkansas and Missouri to Fayette Jct., Fayetteville and Ft. Smith Ark., in cents per car of 90,000 pounds or less with any excess loads to be charged proportionately. These rates expire with December 31, 1933, unless sooner cancelled, changed or extended.

| Distances | Rates in cents per car |
|---|---|
| 25 miles and less | 1,200 |
| 50 " " over 25 miles | 1,500 |
| 75 " " " 50 " | 1,750 |
| 100 " " " 75 " | 2,250 |

The next protostate copy is the title page of supplement 4 to I. C. C. 7848, Illinois Central Railroad Company and

The Yazoo and Mississippi Valley Railroad Company Freight Tariff 692-I, publishing rates on logs and other forest materials from stations on the two railroads mentioned herein to Memphis, Tenn. for manufacture and refreshment via the two railroads previously mentioned herein, issued January 7, 1933, affective February 11, 1933. The next photostate copy is page 2 of supplement 4 of the same tariff publishing rates on logs and also stave and heading bolts in cents per car, regardless of weight, to [fol. 862] Memphis, Tenn., from eighteen stations in Mississippi. The distance and rate from each of these stations to Memphis, Tenn. are shown below:

| From | Distance miles | Rate, in cents per car, regardless of weight, to Memphis, Tenn. |
|---|---|---|
| Black Bayou Jct, Miss. | 101 | 2,250 |
| Somerville " | 102 | 2,250 |
| Phillip " | 106 | 2,250 |
| Sandy Ridge " | 109 | 2,250 |
| Ruby " | 111 | 2,250 |
| Money " | 114 | 2,250 |
| Perthshire " | 104 | 2,250 |
| Gunnison " | 107 | 2,250 |
| Waxhaw " | 109 | 2,250 |
| Wright " | 111 | 2,250 |
| Rosedale " | 114 | 2,250 |
| Niles " | 118 | 2,250 |
| Malvina " | 120 | 2,250 |
| Symonds " | 122 | 2,250 |
| Kimball Lake " | 124 | 2,250 |
| Harlow " | 123 | 2,250 |
| Loughlin " | 121 | 2,250 |
| Skene " | 120 | 2,250 |

These rates are published to expire with April 1, 1933, unless sooner cancelled, changed or extended, and are only applicable when the rules shown on pages 5 to 9 of the tariff are complied with. (These rules will be discussed later.)

The next photostate copy is page 3 of supplement 3 to the same tariff publishing rates from five additional stations in Mississippi to Memphis, Tenn. The distances and rates are shown below:

| From | | Distance | To Memphis, Tenn., in cents per car |
|---|---|---|---|
| Mound Bayou, Miss. | | 104 | 2,250 |
| Merigold | " | 107 | 2,250 |
| Cleveland | " | 113 | 2,250 |
| Boyle | " | 116 | 2,250 |
| O'Reillys | " | 119 | 2,250 |

These rates are published to expire April 1, 1933 and are only applicable when the rules published on pages 5 to 9 of the original tariff are complied with.

The next five photostat copies are pages 5, 6, 7, 8 and 9 of the same tariff 692-I, publishing the rules under which [fol. 863] the rate of $22.50 per car from the 23 stations in Mississippi to Memphis, Tenn., tabulated above will apply. The general requirement of these rules is that the $22.50 rate to Memphis will be applied when the reshipping certificates, contracts, bonds, supervision and inspection of records, reshipment within the limit of one year after the inbound logs are received and method of settlement of the freight charges on the movement of logs into Memphis through claim channels are observed. In rule 5, page 6, it is provided that when logs are shipped into Memphis and lumber is shipped out of Memphis, for every pound of lumber shipped out of Memphis the $22.50 rate per car would be applied on every three pounds of logs shipped into Memphis.

The general purpose of these rules is to require protection to the carrier through contract, bond, supervision and inspection of records that when the logs are manufactured into lumber or other products the manufactured products will be reshipped out of Memphis over the lines of either the Illinois Central Railroad or the Yazoo and Mississippi Valley Railroad. In the final settlement of the freight charges covering the movement of logs from the 23 stations in Mississippi to Memphis the net rates are applied amounting to $22.50 per car regardless of weight for distances ranging from 101 miles to 124 miles from Memphis, and for every car of lumber shipped out of Memphis the rate of $22.50 per car regardless of weight will be applied on every three carloads of logs shipped inbound to Memphis.

The next photostat copy is the title page of supplement 5 to I. C. C. 7748, freight tariff 780-A of the Illinois Central Railroad Company, The Yazoo and Mississippi Valley

Railroad Company and Gulf and Ship Island Railroad Company, publishing rates on logs, carloads between sta- [fol. 864] tions on the Yazoo and Mississippi Valley Railroad in Louisiana west of the Mississippi River and stations on Gulf and Ship Island Railroad, Illinois Central Railroad and/or The Yazoo and Mississippi Valley Railroad in Mississippi and Louisiana east of the Mississippi River, when for manufacture and reshipment via Illinois Central R. R., The Yazoo and Mississippi Valley R. R. and/or Gulf and Ship Island R. R., issued December 16, 1932, effective January 18, 1933.

The next photostat copy is page 2 of the same supplement. Item 5-B at the bottom of the page publishes rates on logs from stations on the Illinois Central R. R. and The Yazoo and Mississippi Valley R. R. in Mississippi to Tallulah, La., as follows:

| Distances | Rate In cents per car |
|---|---|
| 25 miles or less | 1700 |
| 50 miles and over 25 | 2000 |
| 75 miles and over 50 | 2250 |
| 100 miles and over 75 | 2500 |
| 125 miles and over 100 | 2750 |

These rates per car apply regardless of weight of the car and only when the rules provided on pages 3 to 6 of the original tariff are complied with.

The next four photostat copies are respectively pages 3, 4, 5 and 6 of the original tariff, 780-A. On these pages are the rules relating to supervision and inspection of records and other provisions the same as those already outlined in this affidavit in connection with tariff 692-I of the Illinois Central Railroad previously described herein. The rules in connection with these rates of from $17.00 to $27.50 per car form the final basis on which the freight charges on the logs moved into Memphis are finally settled when the logs are manufactured into lumber or other products and reshipped out of Memphis over either of the lines bringing the logs into Memphis.

E. C. Green.

Sworn to and subscribed before me this 21st of February, 1933. Nell Hurst, Notary Public. My Commission expires —— —, —. (Seal of Nell Hurst, Notary Public, State of Florida.)

(Here follow freight tariffs, side folios 865-883)

# MISSISSIPPI CENTRAL RAILROAD COMPANY

## 780-E

(Cancels 780-D.)

## FREIGHT TARIFF

—OF—

## LOCAL AND PROPORTIONAL RATES

—APPLYING ON—

## CLASSES AND COMMODITIES

—BETWEEN STATIONS ON—

## MISSISSIPPI CENTRAL RAILROAD

As provided on page 4.

This Tariff is applicable only to traffic having origin, destination and entire transportation within the State of Mississippi. It will not apply on traffic moving between points within the State of Mississippi and another state or territory, or on traffic moving between points in the State of Mississippi which is transported through another state in transit.

Rates shown herein may be used only when no other through rates apply. When governed by classification which also contains distance rates they will take precedence over the distance rates in such classification. They may not be used either by themselves or in combination in preference to any specific rate.

Governed by Southern Classification No. 48, Agent E. H. Dulaney's I. C. C. No. 23, in connection with Classes 1 to D, inclusive.

Governed by Mississippi Classification No. 3, Agent E. H. Dulaney's I. C. C. No. 3, supplements thereto and reissues thereof, to the extent indicated on page 6 herein; and also governed by exceptions to classification as shown on page 6 herein.

ISSUED AUGUST 10, 1928. EFFECTIVE AUGUST 20, 1928.

W. J. KESSLER,
Ass't General Freight Agent,
Hattiesburg, Miss.

Issued by
LeROY MORRIS,
Traffic Manager,
Hattiesburg, Miss.

File 4188-8.

## GEOGRAPHICAL LIST OF STATIONS AND DISTANCES

| BETWEEN | AND | Natchez, Miss. | Roxie, Miss. | Brookhaven, Miss. | Wanilla, Miss. | Silver Creek, Miss. | Hattiesburg, Miss. |
|---|---|---|---|---|---|---|---|
| **Natchez** | Miss. | | 21 | 65 | 87 | 96 | 150 |
| *Washington | Miss. | 8 | 16 | 59 | 79 | 88 | 142 |
| *Fenwick | Miss. | 13 | 12 | 55 | 75 | 84 | 138 |
| *Cranfield | Miss. | 15 | 9 | 52 | 72 | 81 | 135 |
| *Leesdale | Miss. | 18 | 6 | 49 | 69 | 78 | 132 |
| *Butler | Miss. | 19 | 5 | 48 | 68 | 77 | 131 |
| *McMillan | Miss. | 20 | 4 | 47 | 67 | 76 | 130 |
| **Roxie** | Miss. | 24 | | 43 | 63 | 72 | 126 |
| *Misco | Miss. | 27 | 3 | 40 | 60 | 69 | 123 |
| *Kirby | Miss. | 30 | 6 | 37 | 57 | 66 | 120 |
| *Mile Branch | Miss. | 34 | 10 | 33 | 53 | 62 | 116 |
| Meadville | Miss. | 35 | 11 | 32 | 52 | 61 | 115 |
| Bude | Miss. | 38 | 14 | 29 | 49 | 58 | 112 |
| *Monroe | Miss. | 40 | 16 | 27 | 47 | 56 | 110 |
| Eddiceton | Miss. | 43 | 19 | 24 | 44 | 53 | 107 |
| Quentin | Miss. | 45 | 21 | 22 | 42 | 51 | 105 |
| *Celco | Miss. | 48 | 24 | 19 | 39 | 48 | 102 |
| McCalls | Miss. | 49 | 25 | 18 | 38 | 47 | 101 |
| Lucien | Miss. | 51 | 27 | 16 | 36 | 45 | 99 |
| *Williams | Miss. | 53 | 29 | 14 | 34 | 43 | 97 |
| *Cobbs | Miss. | 57 | 33 | 10 | 30 | 39 | 93 |
| *Tetus | Miss. | 60 | 36 | 7 | 27 | 36 | 90 |
| **Brookhaven** | Miss. | 65 | 43 | | 20 | 29 | 83 |
| *Carlos | Miss. | 72 | 48 | 5 | 15 | 21 | 78 |
| *Woolworth | Miss. | 78 | 54 | 11 | 9 | 18 | 72 |
| Sontag | Miss. | 83 | 59 | 16 | 1 | 13 | 67 |
| **Wanilla** | Miss. | 87 | 63 | 20 | | 9 | 63 |
| *Birch | Miss. | 89 | 65 | 22 | 2 | 5 | 61 |
| *Richardson | Miss. | | 66 | 23 | 3 | 6 | 60 |
| *Hooker | Miss. | 92 | 68 | 25 | 5 | 1 | 58 |
| **Silver Creek** | Miss. | 96 | 72 | 29 | 9 | | 54 |
| *Lucas | Miss. | 99 | 75 | 32 | 12 | 3 | 51 |
| *Whitesand | Miss. | 102 | 78 | 35 | 15 | 6 | 48 |
| Prentiss | Miss. | 105 | 81 | 38 | 18 | 9 | 45 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| *Prentiss | Miss. | 105 | 81 | 38 | 18 | 9 | 15 | |
| *Shepherd | Miss. | 109 | 85 | 42 | 20 | 13 | 41 | |
| Carson | Miss. | 112 | 88 | 45 | 25 | 16 | 38 | |
| Bassfield | Miss. | 117 | 93 | 50 | 30 | 21 | 33 | |
| *Hawkins | Miss. | 119 | 95 | 52 | 32 | 23 | 31 | |
| Britton | Miss. | 119 | 95 | 52 | 32 | 23 | 31 | |
| *Melba | Miss. | 124 | 100 | 57 | 37 | 28 | 26 | |
| *Hercules | Miss. | 126 | 102 | 59 | 39 | 30 | 24 | |
| *Higgins | Miss. | 128 | 104 | 61 | 41 | 32 | 22 | |
| Sumrall | Miss. | 131 | 107 | 64 | 44 | 35 | 19 | |
| *Bynum | Miss. | 132 | 108 | 65 | 45 | 36 | 18 | |
| *Coral | Miss. | 133 | 109 | 66 | 46 | 37 | 17 | |
| *Epley | Miss. | 136 | 112 | 69 | 49 | 40 | 14 | |
| *Clyde | Miss. | 139 | 115 | 72 | 52 | 43 | 11 | |
| *Breland | Miss. | 143 | 119 | 76 | 56 | 47 | 7 | |
| *Wardwell | Miss. | 144 | 120 | 77 | 57 | 48 | 6 | |
| **Hattiesburg** | Miss. | 150 | 126 | 83 | 63 | 54 | 3 | |
| *Dreyfus | Miss. | 153 | 129 | 86 | 66 | 57 | | |
| **Tallahala Branch.** | | | | | | | | |
| *Booth | Miss. | 155 | 131 | 88 | 68 | 59 | 5 | |
| *Morris | Miss. | 159 | 135 | 92 | 72 | 63 | 9 | |
| Tallahala | Miss. | 163 | 139 | 96 | 76 | 67 | 13 | |

*No Agent. Freight charges must be prepaid.
‡Forwarding station only; shipments for this station will not be accepted.
§Carload freight only.
‖L C L shipments only.

## EXPLANATION OF ABBREVIATIONS.

| | |
|---|---|
| C L | Carload. |
| I. C. C. | Interstate Commerce Commission. |
| L C L | Less carload. |
| Lbs | Pounds. |
| Miss | Mississippi. |
| M. R. C | Mississippi Railroad Commission. |
| No | Number. |
| N O S | Not otherwise specified. |
| N O I B N | Not otherwise indexed by name. |

SECTON 2.

MISCELLANEOUS COMMODITY RATES Continued.

In cents per 100 pounds, unless otherwise specified.

| Item No. | COMMODITY | FROM | TO | RATE |
|---|---|---|---|---|
| 259 | Gravel, carloads, minimum weight 90% of the marked capacity of the car, except when car is loaded to full visible capacity, actual weight shall govern | Hattiesburg Miss. | Brookhaven Miss. | In cents per ton of 2,000 lbs.<br>100 |
| 261 | Gravel, minimum weight 10% less than marked capacity of car, except that when cars are loaded to visible capacity, in which case, the actual weight shall apply | Parkers Spur Miss. | Natchez Miss. | In Dollars per car<br>$15.00 |
| | **Description A** Handles, broom or mop, wooden, without metal attachments, when in the rough or in the white, but not further finished, and not primed, shellaced, varnished, painted, treated or waxed, carload minimum weight 30,000 pounds (see Note) | | | 13 |
| 263 | **Description B** Handles, broom or mop, wooden, without metal attachements, when finished, primed, shellaced, varnished, painted, treated or waxed, carload minimum weight 30,000 lbs. (see Note)<br>NOTE Articles named in Descriptions A and B, may be shipped in mixed carloads, at the higher rate. | Hattiesburg Miss. | Natchez Miss. | 16 |

| | | | | In Dollars per Car |
|---|---|---|---|---|
| 265 | Logs, hardwood, carloads<br>NOTE For manufacture and reshipment. | Bassfield ... Miss.<br>Birch ... Miss.<br>Carson ... Miss.<br>Clyde ... Miss.<br>Epley ... Miss.<br>Prentiss ... Miss.<br>Silver Creek ... Miss.<br>Sumrall ... Miss.<br>Wanilla ... Miss.<br>Whitesand ... Miss. | Bude ... Miss.<br>(See Note.) | (56) $15.00<br>(56) 15.00<br>(56) 15.00<br>(56) 20.00<br>(56) 20.00<br>(56) 15.00<br>(56) 15.00<br>(56) 20.00<br>(56) 15.00<br>(56) 15.00 |

| | | | | In Dollars Per Car |
|---|---|---|---|---|
| 267 | Logs, hardwood, carloads..... | Wanilla ... Miss.<br>And intermediate points.<br>(See page 4.) | Hattiesburg..... Miss. | (56) (57) $15.00 |

(56) Applies only on shipments of five (5) cars or more, moving in one day, in the same train (it being optional only with the railroad company as to handling in the same train); from the same consignor to the same consignee.

(57) Rates on hardwood logs, named above to Hattiesburg, Miss., are applicable only when manufactured product is reshipped via the Mississippi Central Railroad, and shall be applied only where consignees at Hattiesburg, Miss., have filed satisfactory bond with this line, guaranteeing the shipment of the manufactured products from Hattiesburg, Miss., via the Mississippi Central Railroad.

In case of failure of consignee to file such bond the local rates published in tariff, to Hattiesburg, Miss., shall be applied and when the manufactured product is shipped out via the Mississippi Central Railroad, refund will be made of the inbound charges down to rates named above.

For the purpose of policing shipments under this agreement the ratio of logs to manufactured product shall be as follows:

When the raw material is logs, and the manufactured product is rotary cut box material for each carload of manufactured product shipped outbound refund will be made on not more than five (5) carloads of raw material inbound.

Supplement No. 5 to Arkansas No. 253
Cancels Supplements Nos. 1 and 4
Supplement No. 5 contains all changes from the original tariff that are effective on the date hereof.

Supplement No. 5 to I. C. C. No. 9642
Cancels Supplements Nos. 1 and 4
Supplement No. 5 contains all changes from the original tariff that are effective on the date hereof.

FEB 1933
MISS L. B. COLE

FRISCO LINES

# ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

(J. M. Kurn and John G. Lonsdale, Receivers)

IN CONNECTION WITH PARTICIPATING CARRIERS SHOWN IN TARIFF

SUPPLEMENT No. 5

TO

## FREIGHT TARIFF NO. 2173-O

Cancels Supplements Nos. 1 and 4
Supplement No. 5 contains all changes from the original tariff that are effective on the date hereof.

STAMP HERE

DATE RECEIVED

OF

LOCAL, JOINT AND PROPORTIONAL RATES
IN CENTS PER 100 POUNDS, EXCEPT AS NOTED

ON

## FOREST PRODUCTS, CARLOADS

(As Described in Item No. 15)

FROM

## POINTS IN ALABAMA, ARKANSAS, KANSAS, LOUISIANA, MISSISSIPPI, MISSOURI, OKLAHOMA AND TENNESSEE

ALSO

## DISTANC RATES FROM ARKANSAS, MISSOURI AND CEDARS, OKLA.

TO

## FAY TTE JCT., ARK., FAYETTEVILLE, ARK., FT. SMITH, ARK. AND POTEAU, OKLA.

APPLICATION OF EMERGENCY CHARGES

Charges resulting from the rates in this tariff are subject to the provisions of Tariff of Emergency Charges, Southwestern Lines' No. 24-A, Agent J. E. Johanson's I. C. C. No. 2398, Ark. R. C. No. 108, Western Trunk Lines' No. 282-A, Agent E. B. Boyd's I. C. C. No. A-2277, and Agent F. L. Speiden's No. 250-A, I. C. C. No. 1616.

ISSUED JANUARY 31, 1933

EFFECTIVE MARCH 14, 1933
(Except as otherwise provided herein)

Issued by
J. M. STRUPPER,
Assistant Freight Traffic Manager,
906 Olive Street
ST. LOUIS, MO

(C.E.Q.—300) 73176 PLANOGRAPHED BY JOHN S. SWIFT CO., INC. ST. LOUIS, CHICAGO, NEW YORK
(PRINTED IN U.S.A.)

FRISCO

Supplement 4 to Frisco 8173-O

## DISTANCE RATES

(4) #-Item 160-B, Cancels 160-A

BILLETS, BOLTS, LOGS, ROUGH STAVES AND ROUGH HEADING, STRAIGHT OR MIXED CARLOADS

Applies only from and to stations on St.Louis-San Francisco Railway as follows:

TO

FAYETTE JCT., ARK., FAYETTEVILLE, ARK. AND FT. SMITH, ARK.

FROM

Stations in Arkansas and Missouri

(For List of stations see Official List of Open and Prepay Stations No. 47, Agent F.A.Ireland's I.C.C. No. A-13, Ark. No. A-13, supplements to or successive issues thereof).

ALSO

CEDARS, OKLA.

Rates per car will only apply on cars of 90,000 pounds or less, with any excess loads to be charged proportionately.

(Expires with December 31, 1933, unless sooner cancelled, changed or extended).

| DISTANCES (To ascertain distances see Stl-SF Ry. Freight Tariff 1250-F I.C.C. No. 9216, Ark. No. 174) | RATES IN CENTS PER CAR |
|---|---|
| | COLUMN A SEE ITEMS 5 AND 15 |
| 25 miles and less | 1200 |
| 50 miles and over 25 miles | 1500 |
| 75 miles and over 50 miles | 1750 |
| 100 miles and over 75 miles | 2250 |

If from and to the same stations the charges in this item make lower than the per car charges resulting from the application of cents per 100 pounds rates published elsewhere in tariff, the charges in this item will apply.

# Departure from the terms of Rule 7 (b) of Tariff Circular 20 is authorized under special permission of the Interstate Commerce Commission No. 115899 of July 1, 1932.

(4) Reissued from Supplement No. 4, effective December 16, 1932.

For explanation of abbreviations, see page 2 of tariff as amended.

Charges resulting from rates in this Schedule, or as amended, are subject to the provisions of Agent F. L. Speiden's Tariff of Emergency Charges No. 280-A, I. C. C. No. 1616, supplements thereto or successive issues thereof, except as otherwise provided herein

Supplement No. 4 to
(Cancels Supplement No. 3)
**I. C. C. No. 7848**
(Supplements Nos. 3 and 4 contain all changes from the original Tariff that are effective on the date hereof)

# ILLINOIS CENTRAL RAILROAD COMPANY
(SOUTHERN LINES)

# THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

STAMP HERE

DATE RECEIVED

SUPPLEMENT No. 4
(Cancels Supplement No. 3)
(Supplements Nos. 3 and 4 contain all changes from the original Tariff that are effective on the date hereof)

TO

## 692-I

## FREIGHT TARIFF

OF

## LOCAL AND JOINT RATES

APPLYING ON

## Logs; Flitches; Hoop Poles; Bolts; Billets, viz.: Handle, Pole, Shaft, Spoke, Singletree and Doubletree, Carloads

(Except Pine; also except Butternut, Cocobolo, Ebony, Lignum Vitae, Mahogany, Rosewood, Spanish Cedar, and similar foreign woods)

FROM STATIONS ON

**ILLINOIS CENTRAL RAILROAD**
(SOUTHERN LINES)

**THE YAZOO AND MISSISSIPPI VALLEY RAILROAD**
(Indexed on pages 2 to 4 of Tariff)

TO

## MEMPHIS, TENN.

FOR MANUFACTURE AND RESHIPMENT VIA ILLINOIS CENTRAL RAILROAD OR THE YAZOO AND MISSISSIPPI VALLEY RAILROAD

CLASSIFICATION

Governed, except as otherwise provided herein, by Southern Classification No. 50, Agent E. H. Dulaney's I. C. C. No. 44, supplements thereto or successive issues thereof, and by Exceptions to said Classification as shown on page 4 of Tariff.

Governed as to prepay requirements at stations, discontinuance of stations, changes in station names, and restrictions as to the handling of carload freight by I. C. R. R. Co. and The Y. and M. V. R. R. Co. Circular No. 99-I, I. C. C. No. A-10254; also The Y. and M. V. R. R. Tariff 88-C, I. C. C. 7390, supplements thereto or successive issues thereof.

**ISSUED JANUARY 7, 1933** **EFFECTIVE FEBRUARY 11, 1933**

Issued by
J. L. SHEPPARD
General Freight Agent
135 East Eleventh Place
CHICAGO, ILL.

WILLIAM HAYWOOD
Freight Traffic Manager
CHICAGO, ILL.

JOSEPH HATTENDORF
Assistant Freight Traffic Manager
CHICAGO, ILL.

(11)

Supplement No.4 to 892-I.

(Amends Page 17 of Tariff and Page 2 of Supplement No.2)

RATES

APPLYING ON LOGS; ALSO STAVE AND HEADING BOLTS, CARLOAD
(In Cents Per Car)
(Regardless of Weight)

TO

MEMPHIS, TENN.

(For Application of Rates and Rules Governing, see Pages 8 to 9, Inclusive, of Tariff)

| Index No. | FROM Y.and M.V.R.R. | Reshipping Rates |
|---|---|---|
| | Tallahatchie District | |
| 177 | Black Bayou Jct.Miss. | ③ 2250 |
| 178 | Somerville. . .Miss. | ③ 2250 |
| 180 | Philipp . . . .Miss. | ③ 2250 |
| 181 | Sandy Ridge . .Miss. | ③ 2250 |
| 183 | Ruby. . . . . .Miss. | ③ 2250 |
| 184 | Money . . . . .Miss. | ③ 2250 |
| 409 | ♦Perthshire . .Miss. | ① 2250 |
| 410 | ♦Gunnison . . .Miss. | ① 2250 |
| 411 | ♦Waxhaw . . . .Miss. | ① 2250 |
| 412 | ♦Wright . . . .Miss. | ① 2250 |
| 413 | ♦Rosedale . . .Miss. | ① 2250 |
| | Kimball Lake District | |
| 347 | ♦Niles . . . . .Miss. | ① 2250 |
| 348 | ♦Malvina . . . .Miss. | ① 2250 |
| 349 | ♦Symonds . . . .Miss. | ① 2250 |
| 352 | ♦Kimball Lake. .Miss. | ① 2250 |
| 352½ | ♦Harlow. . . . .Miss. | ① 2250 |
| 353 | ♦Loughlin. . . .Miss. | ① 2250 |
| 354 | ♦Skene . . . . .Miss. | ① 2250 |
| | Riverside District | |

♦ Reduction.
① Effective January 11,1933. Issued on one (1) days notice authority special permission of the Interstate Commerce Commission No.121565 of January 6, 1933.
③ Expires with April 1,1933 unless sooner cancelled, changed or extended.

Supplement No. 27 to Tariff 692-H
Supplement No. 3 to Tariff 692-I

Effective December 1, 1932.

(Amends Page 3 of Supplement No. 1 of I. C. C. No. 7848 to Extent Shown Below)

## RATES OF FREIGHT

## APPLYING ON LOGS; ALSO STAVE AND HEADING BOLTS, CARLOAD

(In Cents Per Car)

(Regardless of Weight)

## TO MEMPHIS, TENN.

(For Application of Rates and Rules Governing, see pages 5 to 9, inclusive, of I. C. C. No. 7848 to the Extent Shown Below)

| Index No. | FROM | | Reshipping Rates |
|---|---|---|---|
| | **The Y. and M. V. R. R.** | | |
| | **Clarksdale District** | | |
| 130 | Mound Bayou | Miss. | (♦)2250 |
| 131 | Merigold | Miss. | (♦)2250 |
| | **Cleveland District** | | |
| 304-A | Cleveland | Miss. | (♦)2250 |
| 305 | Boyle | Miss. | (♦)2250 |
| 306 | O'Reillys | Miss. | (♦)2250 |

♦Reduction
(1)Expires April 1, 1933, on intrastate traffic.

## APPLICATION OF RATES

(a) The rates published herein apply only on Hardwood Logs, Bolts, Billets, Fliteches and Hoop Poles (see description in paragraph (b)), from stations on Illinois Central Railroad (Southern Lines) and The Yazoo and Mississippi Valley Railroad Indexed on pages 2 to 4, inclusive, handled under the rules and regulations provided herein.

(b) The term Hardwood as used in paragraph (a) is hereby defined as embracing all kinds of wood except Pine; also except Boxwood, Butternut, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Satinwood, Spanish Cedar, Teakwood and Vermilion.

## BILLING RATES

(a) The "Billing Rates" shown on pages 10 to 16, inclusive, apply on shipments of Logs, Hoop Poles, Bolts, Billets or Fliteches forwarded to Memphis, Tenn., for manufacture and reshipment via Illinois Central Railroad or The Yazoo and Mississippi Valley Railroad, subject to Rules provided on pages 5 to 9, inclusive. Shipments must in all instances be waybilled to Memphis on basis of the billing rates, and charges will be collected by the Agent at Memphis, Tenn., on such billing rates, except as provided in Rule 15."

(b) In the absence of through rates on Logs, Hoop Poles, Bolts, Billets and Fliteches, carloads, from points of origin shown herein to destinations on Illinois Central Railroad, the "Billing Rates" to Memphis, Tenn., published on pages 10 to 16, inclusive, apply also to Memphis, Tenn., in reconstructing through rates on shipments from such points of origin to such points of destination. Shipments so handled will not be subject to rules published on pages 5 to 9, inclusive.

## RESHIPPING RATES

(a) The "Reshipping Rates" must not be used in waybilling shipments to Memphis, Tenn. All shipments must be waybilled to Memphis, Tenn., at "Billing Rates."

(b) Except as provided in Rule 15, and upon evidence, as provided for herein, of shipments from Memphis, Tenn., via The Illinois Central Railroad or The Yazoo and Mississippi Valley Railroad, of articles manufactured of Logs, Hoop Poles, Bolts, Billets or Fliteches at full published freight tariff rates applying from Memphis, Tenn., proper (see Rule 45, page 8), the freight on Logs, Hoop Poles, Bolts, Billets and Fliteches into Memphis, Tenn., will be reduced to the basis of "Reshipping Rates" shown on pages 10 to 17, inclusive; through the Freight Claim Department on the ratios shown in Rule 5.

| Rule | WHEN ARTICLE SHIPPED IN IS | AND ARTICLE SHIPPED OUT IS | For each pound shipped out from Memphis, Tenn., "Reshipping Rates" shown on pages 10 to 17, inclusive, will be applied on not more than the number of pounds shown below of the article shipped in. |
|---|---|---|---|
| | Billets | Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages | 3 |
| | Billets | Felloes | 1¼ |
| | Billets | Handles | 4 |
| | Billets | Handle Material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape | 4 |
| | Billets | Ladder Rungs | 5 |
| | Billets | Neck Yokes | 3 |
| | Billets | Picker Sticks | 4 |

| | | |
|---|---|---|
| Billets | Neck Yokes | 3 |
| Billets | Picker Sticks | 3 |
| Billets | Poles | 4 |
| Billets | Rims, bent | 3 |
| Billets | Rim Strips, rough or planed, not bent | 1½ |
| Billets | Rough Turned Wooden Rods not exceeding 2 inches in diameter | 3 |
| Billets | Shaft | 5 |
| Billets | Single and Doubletrees | 3 |
| Billets | Spokes | 3 |
| Billets | Vehicle Material (not otherwise indexed by name in Tariff), in straight carloads; also Vehicle Material (not otherwise indexed by name in Tariff), (except felloes and rims, bent), in mixed carloads | 4 |
| Ratios | | 3 |
| | Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages | 3 |
| | Felloes | 1½ |
| | Handles | 4 |
| | Handle Material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape | 4 |
| Hitches, consisting only of irregular pieces (not squared or edged), sawed from Logs with bark on one or both edges when for manufacture and reshipment | Hoops | 3 |
| | Neck Yokes | 3 |
| | Picker Sticks | 4 |
| | Poles | 3 |
| | Rims, bent | 1½ |
| | Rim Strips, rough or planed, not bent | 3 |
| | Shafts | 3 |
| | Single and Doubletrees | 3 |
| | Spokes | 4 |
| | Vehicle Material (not otherwise indexed by name in Tariff), in straight carloads; also Vehicle Material (not otherwise indexed by name in Tariff), (except felloes and rims, bent), in mixed carloads | 3 |
| Hoop Poles | Hoops | 4 |

(Concluded on following page)

## RESHIPPING RATES—Concluded

| Rule | WHEN ARTICLE SHIPPED IN IS | AND ARTICLES SHIPPED OUT IS | For each pound shipped out from Memphis, Tenn., "Reshipping Rates" shown on pages 16 to 17, inclusive, will be applied on not more than the number of pounds shown below of the article shipped in. |
|---|---|---|---|
| | Logs and Bolts | Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages | 5 |
| | Logs and Bolts | Baskets, viz.: | |
| | | Fruit or Vegetable, made of Veneer, not braided, plaited or woven | |
| | | Grape, made of Veneer, with solid wooden tops and bottoms, not braided, plaited or woven | 5 |
| | Logs and Bolts | Barrel Bungs | 5 |
| | Logs and Bolts | Boat Oars | 5 |
| | Logs and Bolts | Box Material | 4 |
| | Logs and Bolts | Chair Stock | 3 |
| | Logs and Bolts | Crate Material | 4 |
| | Logs | Flooring, Finished | 3 |
| | Logs | Golf Head Blocks | 5 |
| | Logs and Bolts | Golf Head Billets | 5 |
| | Logs and Bolts | Hames | 5 |
| | Logs and Bolts | Handles | 4 |
| | Logs and Bolts | Handle Material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape | 5 |
| | Logs and Bolts | Heading | 5 |
| | Logs and Bolts | Hoops | 4 |
| | Logs and Bolts | Insulator Pins | 4 |
| Ratios | Logs and Bolts | Ladder Rungs | 3 |
| | Logs and Bolts | Lumber | 5 |
| | Logs | Moulding, other than ornamental | 3 |
| | Logs and Bolts | Picker Sticks | 3 |
| | Logs | Plywood | 5 |
| | Logs | Porch Columns | 5 |
| | Logs | Pumps | 4 |
| | Logs | Rung Timbers | 4 |

| | | |
|---|---|---|
| Logs | Porch Columns | 5 |
| Logs | Pumps | 4 |
| Logs | Pump Tubing | 4 |
| Logs and Bolts | ◆Sawn Cross Ties | 4 |
| | Rough Turned Wooden Rods not exceeding 2 inches in diameter | 3 |
| Logs and Bolts | Shoe Last Blocks | 5 |
| Logs and Bolts | Shuttle Block Billets | 5 |
| Logs and Bolts | Skewers | 5 |
| Logs | Tobacco-Hogshead Material, viz.: | 5 |
| | Staves, Heading, Liners | 5 |
| Logs and Bolts | Staves | 4 |
| Logs and Bolts | Sucker Rods | 4 |
| Logs and Bolts | Tie Plugs | 5 |
| Logs and Bolts | Vehicle Stock | 5 |
| Logs and Bolts | Veneer, ¼ of an inch and less in thickness | 5 |
| Logs and Bolts | Veneer, over ¼ of an inch in thickness | 3 |

10 Claims

Claims must be supported by:

(a) Paid freight bills covering articles shipped in, and such paid freight bills must clearly indicate the weight of the Logs, Hoop Poles, Bolts or Billets. If the paid freight bills do not show this information or satisfactory evidence thereof is not furnished, such paid freight bills will not be available for securing protection of rates shown herein.

(b) Copies of bills of lading showing the article shipped out via the Illinois Central Railroad or The Yazoo and Mississippi Valley Railroad and such copies of bills of lading must clearly indicate the character and weight of the article shipped out; for example: Lumber, Staves, Handles, etc. If the copies of bills of lading do not show this information or satisfactory evidence thereof is not furnished, such copies of bills of lading will not be available for securing protection of rates shown herein.

15— Bonds

(a) The reshipping rates as shown on pages 10 to 17, inclusive, will be applied by the Agent at Memphis, Tenn., upon delivery of the raw material, provided the consignee has executed suitable contract supported by bond satisfactory to the I. C. R. R. Co. and The Y. and M. V. R. R. Co. for the shipment of the manufactured product via those roads at full published rates applicable from Memphis, Tenn. (see Rule 45, page 8), or in the event the manufactured product is not so shipped, for the payment to the I. C. R. R. Co. or The Y. and M. V. R. R. Co. of charges on basis of rates lawfully applicable to Memphis, Tenn., on such traffic when for disposition other than for manufacture and shipment via the I. C. R. R. or The Y. and M. V. R. R.

(b) The amount of the bond required in the preceding paragraph shall at all times be sufficient to fully cover the consignee's liability to the I. C. R. R. Co. and The Y. and M. V. R. R. Co. When the amount of the liability of the consignee to the roads mentioned exceeds the amount of the bond furnished, subsequent shipments of inbound raw material will be charged for at the rates lawfully applicable to Memphis, Tenn., on such traffic when for disposition other than for manufacture and reshipment via I. C. R. R. or The Y. and M. V. R. R. until required outbound shipments reducing the liability shall have been made or satisfactory bond furnished to cover the additional liability.

(c) The shipment of manufactured product outbound from Memphis, Tenn., against the inbound raw material to be on basis of the ratios provided in Rule 5.

(d) Whenever the consignee at Memphis, Tenn., elects to use the basis authorized in paragraph (a) of this Rule he must, in consideration of the application of the basis authorized therein, keep upon forms prescribed or approved by the Southern Weighing and Inspection Bureau a record of receipts from all sources, of all dispositions and of tonnage on hand of raw material and manufactured products. Further, to furnish affidavit when required as to the accuracy of such records. In the event of failure or refusal to keep such records, the application of rates as provided in paragraph (a) shall be denied and shipments handled in accordance with provisions under caption of "Billing Rates" and of Rule 10.

◆Will not apply on Sawn Cross Ties consigned to I. C. R. R. Co. or The Y. and M. V. R. R. Co., for company material.

## RULES AND REGULATIONS

| Rule No. | SUBJECT | INSTRUCTIONS |
|---|---|---|
| | **Basis for Constructing Combination Rates** | Except as otherwise indicated, rates on Lumber and Forest Products (see Note below) carloads; are subject to Rules for Constructing Combination Rates as provided in Agent B. T. Jones' Freight Tariff No. 228, I. C. C. No. U. S. (I. C. R. R. Co. and The Y. and M. V. R. R. Co. Tariff 13617-A), supplements thereto or reissues thereof.<br>**Note** Applies to rates on the following wooden articles in carloads, where commodity rates thereon are published in this tariff:<br>Agricultural implement material, in the rough; Bark, tan; Lumber, rough or dressed; Mine props; Mine rollers; Barrel material, viz.: Staves, heading and hoops; Billets or blocks, round or split; Blocks, paving, creosoted or not creosoted; Bolts or butts, viz.: Heading, shingle or stave; Box material; Crate material; Laths; Logs; Piles or Piling; Poles, telephone and telegraph; Shingles; Spokes, club turned; Ties, cross; Timber, N. O. S.; Vehicle material, in the rough |
| 25 | **Change of Ownership of Raw Material or Unmanufactured Products** | (a) A transfer to manufacturers of paid freight bills covering inbound raw material will be permitted only where the ownership of the raw material is also transferred by bona fide sale. A certificate to this effect shall be made in the following form on the face of the paid freight bill:<br>"This is to certify that there has been a bona fide sale to the undersigned of the commodity covered by this paid freight bill."<br>Signed .....<br>Date .....<br>(b) The expense bills covering raw material may be used to secure application of rates as authorized by this Tariff where manufactured products are transferred by bona fide sale only when accompanied by certificate in the following form:<br>"This is to certify that there has been a bona fide sale of ..... (insert manufactured product) from ..... (insert name of manufacturer) to the undersigned and such manufactured product or products manufactured therefrom consisting of ..... was forwarded over the ..... (insert I. C. R. R. or The Y. and M. V. R. R.) as indicated below and ..... (insert name of manufacturer), is entitled to application of rates on raw material as authorized in Tariff 692-I, I. C. C. No. 7848, supplements thereto and reissues thereof:<br>Car No. Commodity Weight Date shipment moved<br>(Signature of shipper of manufactured product)<br>(c) When claims are made and certificates of the kind required by paragraph (b) accompany claims, copies of the bills of lading covering such outbound shipments will not be required. |
| 30 | **Certificate to be Attached to Claims** | Claims must be accompanied by certificate in the following form:<br>Tender is hereby made to the Illinois Central Railroad Co. or The Yazoo and Mississippi Valley Railroad Co. (as the case may be), of freight bills numbered and dated as specified below for the purpose of securing application of rates as provided in I. C. R. R. Co. or The Y. and M. V. R. R. Co. Tariff No. 692-I, I. C. C. No. 7848, on the commodity covered thereby. This tender is made in good faith and with the guarantee on our part that such rates may legally be applied under the rules of said railroad as published in its Tariff No. 692-I, I. C. C. No. 7848, issued October 27, 1932, or supplements thereto.<br>Freight Bill ..... Pro No. ..... Date ..... Manufacturing Point .....<br>(Signature of Claimant.)<br>In instances where the shipper at the manufacturing point for commercial reasons forwards shipments from the manufacturing point in the name of another party, firm or corporation, the actual shipper must add to the certificate quoted above the following:<br>"For Commercial reasons the shipment from ..... (insert name of manufacturing point), in car ..... (insert car initial and number), shows consignor as follows:<br>(Signature of the Actual Shipper)<br>**Note**—Where contract and bond made as provided in paragraph (d) of application of re-shipping rates, page 3 herein, certificate must be attached to the tonnage records of the manufacturer. |
| 35 | **Minimum Charge** | The minimum charge for carload shipments shall be Fifteen Dollars ($15.00) per car (See Note below.)<br>**Note**—Will not apply on the following commodities:<br>**Forest Products, viz.:** Billets or blocks (round or split); Bolts or Butts, viz: Heading, Shingle or Stave.<br>**Forest Products, viz.:** Logs |

## RULES AND REGULATIONS

| Rule No. | SUBJECT | INSTRUCTIONS |
|---|---|---|
| 70 | **Terminal, Transit and Other Privileges and Charges** | In the absence of specific provisions to the contrary shipments transported under this Tariff will be subject to all terminal charges and allowances relating to:<br>Arbitraries — Diversion — Inspection — Storage<br>Car Rentals — Drayage — Mileage on Private Cars — Switching<br>Car Service — Grading — Milling — Transit Privileges<br>Demurrage — Handling — Reconsignment — Wharfage<br>together with all other privileges, charges and rules which in any way increase or decrease the amount to be paid on any shipment between points named in this Tariff or as the same may be amended or which increase or decrease the value of the service to the shipper as provided in tariffs lawfully on file with the Interstate Commerce Commission.<br>In the absence of specific provisions in this Tariff to the contrary, property destined to points beyond the tracks of Illinois Central R. R. Co. or The Yazoo and Mississippi Valley R. R. Co. is entitled to such privileges, and will be subject to such charges as provided in tariffs and supplements thereto published and lawfully on file with the Interstate Commerce Commission, of the carriers granting the privilege and performing the service. |
| 75 | **Time Limit** | (a) Shipments of outbound tonnage must be made within one year from the date of paid freight bill covering inbound movement of rough material, except as provided in paragraph (b) and Notes 1, 2, 3, 4, 5 and 6 below.<br>(b) In the event the shipper operating under the provisions of this Tariff is unable to forward the required tonnage as provided in this tariff, within the time limit named in paragraph (a) but has on hand sufficient rough material or the manufactured product thereof to satisfy tariff requirements as to outbound shipment of all rough material forwarded to the mill point under the terms of this Tariff, the time limit as provided in paragraph (a) will be extended to eighteen (18) months from date of paid freight bill covering inbound movement of rough material under the following conditions:<br>Shippers desiring such extensions must make application to the carrier in writing not less than thirty (30) days prior to the expiration of time limit of freight bills, as provided in paragraph (a), on which such extension is desired.<br>A certified inventory showing the amount of rough material and manufactured product thereof then on hand must accompany such application.<br>Upon receipt of application for extension of time limit the carrier's inspector shall verify such inventory and render invalid for reshipment under the terms of this Tariff such freight bills, if any, as are not represented by rough material or manufactured product thereof then on hand. In making such verification inspector shall take into consideration those upon which the time limit is desired to be extended as well as all other freight bills against which outbound shipments have not been made in accordance with tariff.<br>Freight charges shall be collected on such cancelled freight bills on basis of full local or joint rates applicable to destination of rough material in effect on date of inbound movement.<br>The time limit of such remaining freight bills as are represented by rough material or manufactured product thereof then on hand on basis of ratios named in application of rates, pages 5 and 6, will then be extended to eighteen months from date of such freight bills and the following notation should be made on all freight bills so extended:<br>The time limit for reshipment of rough material represented by this freight bill is hereby extended to eighteen (18) months, under the terms of paragraph (b), Rule 75, I. C. R. R.-The Y. and M. V. R. R. Freight Tariff No. 692-I, I. C. C. No. 7848, supplements thereto or successive issues thereof. Signed.....Inspector<br>**Note 1**—The time limit of freight bills which, under the rules as published herein, expire on and after August 2, 1930, but not later than January 31, 1931, will be extended for a period of six (6) months.<br>**Note 2**—The time limit of expense bills which, under rules as published herein, expire during the period February 1, 1931, to July 1, 1931, inclusive, are hereby extended for a period of six (6) months.<br>**Note 3**—The time limit of expense bills, which under rules published herein, expire with or after July 31, 1931, but not later than January 31, 1932, is hereby extended for an additional period of six months, but in no case beyond the maximum period of three (3) years.<br>**Note 4**—The time limit of expense bills, which, under rules published herein, expire with or after January 31, 1932, but not later than June 30, 1932, is hereby extended for an additional period of six months, but in no case beyond a maximum period of three (3) years.<br>**Note 5**—The time limit of expense bills which, under rules published herein, expire with or after July 1, 1932, but not later than December 31, 1932, is hereby extended for an additional period of six months, but in no case beyond a maximum period of three (3) years.<br>**Note 6**—The time limit of expense bills which, under this rule expire with or after September 17, 1932, but not later than March 17, 1933, is hereby extended for an additional period of six months, but in no case beyond a maximum period of three years and six months. |
| 80 | **Substitution of Freight Bills** | The substitution of other freight bills for those previously used and cancelled in connection with logs, flitches, hoop poles, bolts and billets handled under these transit arrangements is not permitted. Except that in case of bona fide error, upon application of the transit user to the Southern Weighing and Inspection Bureau the substitution of proper freight bills and the necessary correction of the transit account will be permitted, subject to the following:<br>(a) The freight bill substituted shall be one that had transit value at the date of movement from the transit point.<br>(b) The freight bill substituted shall be for one that had no transit value in connection with the outbound movement for which surrendered. |
| 85 | **Cars, Marked, Capacity, Length, Dimensions or Cubical Capacity of** | For marked capacity, length, dimensions or cubical capacity of cars used, refer to the Official Railway Equipment Register, Agent G. P. Conard's I. C. C.-R. E. R. No. 239, supplements thereto or successive issues thereof. |
| 90 | **Exception to Emergency Charges** | Rates in Tariff, as amended, published in cents per car, are not subject to Agent F. L. Speiden's Tariff of Emergency Charges 250-A, I. C. C. 1616, supplements thereto or successive issues thereof. |

## RULES AND REGULATIONS

| Rule No. | SUBJECT | INSTRUCTIONS |
|---|---|---|
| 40 | Minimum and Estimated Weights | (a) Minimum Weights (except where rates are published herein per car) The carload weight on all shipments other than logs is 50,000 pounds, except when the capacity of the car is less, in which case the marked capacity will be the minimum.<br>(b) Minimum Weights (except where rates are published herein per car) The following minimum weights apply on logs:<br>**IN CARS OF** — **THE MINIMUM CARLOAD WEIGHT IS**<br>Less than 40,000 pounds marked capacity — Marked capacity of car (see paragraph (c))<br>40,000 pounds or greater capacity — 40,000 pounds (see paragraph (c))<br>Cars must not be loaded in excess of maximum load limit.<br>(c) Estimated Weights On shipments of logs moving between points where actual weight cannot be ascertained at point of shipments, or at destination, or in transit, the following estimated weights will apply, subject to the minimum weights specified in paragraph (b), owners to furnish invoice or certificate showing the number of feet and kind of logs shipped:<br>Ash 10,000 pounds per 1,000 feet — Gum 10,000 pounds per 1,000 feet<br>Chestnut 10,000 pounds per 1,000 feet — Hickory 14,000 pounds per 1,000 feet<br>Cypress 10,000 pounds per 1,000 feet — Maple 10,000 pounds per 1,000 feet<br>Cottonwood 10,000 pounds per 1,000 feet — Oak 11,000 pounds per 1,000 feet<br>Dogwood 10,000 pounds per 1,000 feet — Poplar 10,000 pounds per 1,000 feet<br>Elm 11,000 pounds per 1,000 feet — Sycamore 10,000 pounds per 1,000 feet<br>(d) In the event there is a deficit between the actual weight and the minimum weight applying in connection with the carload rate to the manufacturing point proper, such deficit shall be charged for on basis of the carload rate lawfully applicable on commodity contained in the car to manufacturing point when for disposition other than for manufacture and reshipment of the product via I. C. R. R. and (or) The Y. and M. V. R. R., as the case may be.<br>In no such case shall the total charges per car be less than would result from the application of the carload minimum weight provided herein at rates published in this Tariff.<br>The provisions of this paragraph apply only in connection with the provisions contained under Heading "Reshipping Rates" on pages 5 and 6 herein.<br>**Note**—On all bills of lading, waybills, transfer slips or freight bills covering shipments of logs, agents must specify kind of logs shipped. |
| 45 | Rates on Articles Shipped Out | The rates published in this Tariff apply only when the article shipped out is forwarded from Memphis, Tenn., at full published freight tariff rate. Rates published on pages 10 to 17, inclusive, inbound, do not apply when the article shipped out is forwarded from Memphis, Tenn., on reconsigning or reshipping rates. |
| 50 | Commodity Rates From Intermediate Point | Subject to the provisions of Notes 1, 2, 3 and 4 below, from any point of origin from which a commodity rate on a given article to a given destination and via a given route is not named in this Tariff, which point is intermediate to a point from which a commodity rate on said article is published in this Tariff via a route through the intermediate point over which such commodity rate applies to the same destination, apply from such intermediate point to such destination and via such route the commodity rate in this Tariff on said article from the next point beyond from which a commodity rate is published herein on that article to the same destination via the same route.<br>**Note 1**—When by reason of branch or diverging lines there are two or more "next beyond" points, apply the rate from the next point beyond (in this Tariff) which on that article to the same destination via the same route results in the lowest charge.<br>**Note 2**—If the intermediate point is located between two points from which commodity rates on the same article via the same route are published in this Tariff apply via that route from the intermediate point the rate from the next point in either direction which results in the higher charge. In applying this note, if there are two or more next beyond points due to branch or diverging lines, eliminate all such next beyond points except the point from which the lowest rate applies.<br>**Note 3**—If the class rate on the same article via the same route from the intermediate point produces a lower charge than would result from applying the commodity rate under this rule, such commodity rate will not apply.<br>**Note 4**—If there is in any other Tariff a commodity rate on the same article from the intermediate origin point applicable over the same route to the same destination, the provisions of this rule are not applicable from such intermediate origin point. |
| 55 | Rates From Stations Not Provided Herein | For rates from stations on Illinois Central R. R., beyond stations shown herein, see I. C. R. R. Co. and The Y. and M. V. R. R. Co. Tariff No. 590-S, I. C. C. No. 7835, supplements thereto or reissues thereof. |
| 60 | Shipments From Connecting Lines | Rates shown on pages 10 to 17, inclusive, also apply from junctions of Illinois Central R. R. and The Yazoo and Mississippi Valley R. R. with connecting lines, on shipments originating at points on connecting lines from which no through net rates are published, subject to the rules shown herein. |
| 65 | Supervision and Inspection | The traffic handled at the rates and under the rules shown in this Tariff shall be subject to the supervision of an inspector or inspectors who shall have access to the records of the railroads and of the shippers for the purpose of determining the accuracy of such records and of the documents submitted in support of claims for protection of the rates shown in this Tariff.<br>Among other duties, it shall be the duty of the Inspector to:<br>(a) Check, compare and verify the inbound roads freight bills.<br>(b) Check the records of the railroads and shippers for the purpose of determining the actual character and weight of the outbound shipments, in order that the correctness of the claims may be fully shown. |

RATES AND CHARGES NAMED HEREIN ARE SUBJECT TO AGENT F. L. SPEIDEN'S TARIFF OF EMERGENCY CHARGES No. 250-A, I. C. C. No. 1616, SUPPLEMENTS THERETO OR SUCCESSIVE ISSUES THEREOF.

Supplement No. 5 to
**I. C. C. No. 7748**
(Cancels Supplement No. 3)
Supplements Nos. ①1 and 5 contain all changes from the original tariff that are effective on the date hereof
(Supplement No. 4 rejected by the Commission)

# THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY
# ILLINOIS CENTRAL RAILROAD COMPANY
(SOUTHERN LINES)
# GULF AND SHIP ISLAND RAILROAD COMPANY, FX 5-A3-A4

**SUPPLEMENT No. 5**
(Cancels Supplement No. 3)
TO
# 780-A

Supplements Nos. ①1 and 5 contain all changes from the original tariff that are effective on the date hereof
(Supplement No. 4 rejected by the Commission)

STAMP HERE

DATE RECEIVED

# FREIGHT TARIFF
OF
## LOCAL AND JOINT RATES
APPLYING ON
# LOGS, CARLOADS
(Except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion)

BETWEEN STATIONS ON
## THE YAZOO AND MISSISSIPPI VALLEY RAILROAD IN LOUISIANA, WEST OF THE MISSISSIPPI RIVER
AND STATIONS ON
## GULF AND SHIP ISLAND RAILROAD, ILLINOIS CENTRAL RAILROAD AND/OR THE YAZOO AND MISSISSIPPI VALLEY RAILROAD IN MISSISSIPPI AND LOUISIANA EAST OF THE MISSISSIPPI RIVER
AS PROVIDED HEREIN
## WHEN FOR MANUFACTURE AND RESHIPMENT VIA ILLINOIS CENTRAL R. R., THE YAZOO AND MISSISSIPPI VALLEY R. R., AND/OR GULF AND SHIP ISLAND R. R.

CLASSIFICATION

Governed, except as otherwise provided herein, by the Southern Classification No. 50, Agent E. H. Dulaney's I. C. C. No. 44 and by supplements to or successive issues of said publication.

Governed by Agent F. A. Leland's Official List of Open and Prepay Stations No. 47, I. C. C. No. A-12 (I. C. R. R. and The Y. and M. V. R. R. Circular No. 311-V), supplements thereto or successive issues thereof, as to prepay requirements, changes in names of stations, additions and abandonment of stations, billing instructions from or to points not on railroads, restrictions as to non-acceptance or non-delivery of freight and changes in station facilities, except as otherwise shown herein.

**ISSUED DECEMBER 16, 1932** **EFFECTIVE JANUARY 18, 1933**

①Special Supplement—Emergency charges.

WILLIAM HAYWOOD,
Freight Traffic Manager,
CHICAGO, ILL.

Issued by
J. L. SHEPPARD,
General Freight Agent,
135 East Eleventh Place,
CHICAGO, ILL.

JOSEPH HATTENDORF,
Assistant Freight Traffic Manager,
CHICAGO, ILL.

(1510)

(300)

(Made in U. S. A.)

(Cancels rates on page 6 of Tariff and page 2 of Supplement No. 3 to the extent shown below)

## RATES OF FREIGHT

**Applying On**

Logs, Carloads, except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion, when for manufacture and reshipment via the Illinois Central Railroad, The Yazoo and Mississippi Valley Railroad and/or Gulf and Ship Island Railroad.

(For Application of Rates and Rules Governing, see pages 3 to 6, inclusive, of tariff)

| DISTANCES (See Note 1) | In Cents per One Hundred Pounds |
|---|---|
| 5 miles and less | (1)4½ |
| 10 miles and over 5 | (1)4½ |
| 15 miles and over 10 | (1)4½ |
| 20 miles and over 15 | (1)4½ |
| 25 miles and over 20 | (1)4½ |
| 30 miles and over 25 | (1)5 |
| 35 miles and over 30 | (1)5 |
| 40 miles and over 35 | (1)5½ |
| 45 miles and over 40 | (1)6½ |
| 50 miles and over 45 | (1)6½ |
| 55 miles and over 50 | (1)6½ |
| 60 miles and over 55 | (1)7 |
| 70 miles and over 60 | (1)7 |
| 75 miles and over 70 | (1)8 |
| 80 miles and over 75 | (1)8 |
| 85 miles and over 80 | (1)8 |
| 90 miles and over 85 | (1)8½ |
| 100 miles and over 90 | (1)8½ |
| 120 miles and over 100 | (1)8½ |
| 125 miles and over 120 | (1)9½ |

| DISTANCES (See Note 1) | In Cents per One Hundred Pounds |
|---|---|
| 150 miles and over 125 | 9½ |
| 160 miles and over 150 | 9½ |
| 175 miles and over 160 | 10 |
| 180 miles and over 175 | 10 |
| 190 miles and over 180 | 10 |
| 200 miles and over 190 | 10 |
| 220 miles and over 200 | 10½ |
| 225 miles and over 220 | 10½ |
| 235 miles and over 225 | 11½ |
| 240 miles and over 235 | 11½ |
| 250 miles and over 240 | 11½ |
| 260 miles and over 250 | 12½ |
| 265 miles and over 260 | 13 |
| 270 miles and over 265 | 13 |
| 275 miles and over 270 | 13 |
| 280 miles and over 275 | 13 |
| 300 miles and over 280 | 13 |
| 315 miles and over 300 | 13½ |
| 325 miles and over 315 | 14 |

| | | | | | |
|---|---|---|---|---|---|
| 125 miles and over 120 | | | 325 miles and over 315 | | |

## MISCELLANEOUS RATES

(In cents per car regardless of weight)

For Application of Rates and Rules Governing, see pages 3 to 6, inclusive, of tariff.

| Item No. | COMMODITY | FROM | TO | DISTANCES | RATE |
|---|---|---|---|---|---|
| (c) 5-B Cancels 5-A | Logs, carload, except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion. | Stations on: I. C. R. R. and The Y. and M. V. R. R. in Mississippi. (See Note 1) (L.U.-27-21) | Tallulah, La. | 25 miles or less.. | 1700 |
| | | | | 50 miles and over 25 | 2000 |
| | | | | 75 miles and over 50 | 2250 |
| | | | | 100 miles and over 75 | 2500 |
| | | | | 125 miles and over 100 | ▲2750 |

Note 1—For list of stations and distances to be used in connection with rates published herein, see I. C. R. R. Tariff No. 36-E, I. C. C. 7614, and The Y. and M. V. R. R. Tariff No. 30-C, I. C. C. No. 7506

▲Reduction.

(c) Will not apply where rates published in Item 5-B or reissues produce a lower charge.

: Rates expire April 1, 1933, unless sooner cancelled, changed or extended.

| Rule No. | SUBJECT | INSTRUCTIONS |
|---|---|---|

(a) The rates shown on page 6 herein must not be used in way-billing shipments. All shipments must be waybilled at full joint rates as lawfully on file with the Interstate Commerce Commission; in effect on date of shipment from point of origin and freight charges will be collected by the agent at such rates, upon delivery, except as provided in paragraph (f).

(b) Except as provided in paragraph (f), and upon evidence, as provided for herein, of shipment via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad of articles manufactured from Logs, at full published freight tariff rates applying from the manufacturing point, proper (see Rule 7, page 4), the freight charges on Logs, into the manufacturing point, will be reduced to the basis of rates shown on page 6 herein, through the Freight Claim Department, on the following ratios:

| WHEN ARTICLE SHIPPED IN IS | AND ARTICLE SHIPPED OUT IS | For each pound shipped out from the manufacturing point rates shown on page 6 hereof will be applied on not more than the number of pounds shown below shipped in |
|---|---|---|
| Logs | Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages | 5 |
| Logs | Baskets, viz.: Fruit or Vegetable, made of Veneer, not braided, plaited or woven | |
| | Grape, made of veneer, with solid wooden tops and bottoms, not braided, plaited or woven | |
| Logs | Boat Oars | 5 |
| Logs | Box Material | 4 |
| Logs | Chair Stock | 3 |
| Logs | Crate Material | 4 |
| Logs | Flooring, finished | 3 |
| Logs | Golf Head Blocks | 5 |

| | | | |
|---|---|---|---|
| | Logs | Crate Material | 3 |
| | Logs | Flooring, finished | 5 |
| | Logs | Golf Head Blocks | 5 |
| | Logs | Golf Head Billets | 5 |
| | Logs | Hames | 4 |
| | Logs | Handles | 5 |
| | | Handle material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape | |
| Application of rates | Logs | Heading | 5 |
| | Logs | Hoops | 4 |
| | Logs | Insulator Pins | 4 |
| | Logs | Ladder Rungs | 3 |
| | Logs | Lumber | 5 |
| | Logs | Moulding, other than Ornamental | 3 |
| | Logs | Picker sticks | 3 |
| | Logs | Plywood | 5 |
| | Logs | Porch Columns | 5 |
| | Logs | Pumps | 4 |
| | Logs | Pump Tubing | 4 |
| | Logs | *Sawn Cross Ties | 4 |
| | Logs | Shoe Last Blocks | 3 |
| | Logs | Shuttle Block Billets | 5 |
| | Logs | Skewers | 5 |
| | Logs | Tobacco-Hogshead Material, viz.: | 5 |
| | | Staves, heading, Liners | |
| | Logs | Staves | 5 |
| | Logs | Sucker Rods | 4 |
| | Logs | Tie Plugs | 4 |
| | Logs | Vehicle Stock | 3½ |
| | Logs | Veneer, ¼ of an inch and less in thickness | 5 |
| | | Veneer, over ¼ of an inch in thickness | 5 |
| | | | 3 |

(c) Claims must be supported by—

Paid freight Bills covering Logs shipped in, and such paid freight bills must clearly indicate the weight of the Logs. If the paid freight bills do not show this information or satisfactory evidence thereof is not furnished, such paid freight bills will not be available for securing protection of rates shown in this Tariff.

Copies of bills of lading showing the articles shipped out via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad and such copies of bills of lading must clearly indicate the characer and weight of the article shipped out: for example, Lumber, Plywood, etc. If the copies of bills of lading do not show this information or satisfactory evidence thereof is not furnished, such copies of bills of lading will not be available for securing protection of rates shown in tariff.

(Concluded on following page)

*Will not apply on Sawn Cross Ties consigned to I. C. R. R. Co., or The Y. and M. V. R. R. Co. for company material.

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## RULES AND REGULATIONS Continued

| Rule No. | SUBJECT | INSTRUCTIONS |
|---|---|---|
| 1 (Continued) | Application of rates | (d) The character of the article shipped out must also correspond with the character of the articles shipped in, in the following respect: Paid freight bill for Hardwoods shipped in must be surrendered against articles of Hardwood shipped out, and Soft Woods shipped in against Soft Woods shipped out.<br>(e) For descriptions of Hardwood and Soft Wood, see paragraphs (b) and (c) shown under "List of stations from and to which rates shown herein apply" on page 2.<br>(f) The rates shown on page 6 herein will be applied by Agent upon delivery of shipments of Logs, providing the consignee has duly executed suitable contract supported by bond satisfactory to the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad for the shipment of the manufactured product via those roads at full published tariff rates applicable from the manufacturing point (see Rule 7, page 4), or in the event the manufactured product is not so shipped, for the payment to the Illinois Central Railroad, Gulf and Ship Island Railroad and or the Yazoo and Mississippi Valley Railroad, of the charges on basis of rates applicable to the manufacturing point, on such traffic when for disposition other than for manufacture and reshipment via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad.<br>(g) The amount of the bond required in the preceding paragraph shall at all times be sufficient to fully cover the consignee's liability to the Illinois Central Railroad, Gulf and Ship Island Railroad and or The Yazoo and Mississippi Valley Railroad. When the amount of the liablity of the consignees to the roads mentioned exceeds the amount of the bond furnished, subsequent shipments of inbound Logs will be charged for at the rates lawfully applicable to point of manufacture, on such traffic when for disposition other than for manufacture and reshipment via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad until required outbound shipments reducing the liability shall have been made or a satisfactory bond furnished to cover the additional liability.<br>(h) The shipment of Manufactured product outbound from the manufacturing point against the inbound Logs to be on basis of the ratios provided in paragraph (b).<br>(i) Whenever the consignee at point of manufacture elects to use the basis authorized in paragraph (f) of this Note, he must, in consideration of the application of the rates authorized therein, keep upon forms prescribed or approved by the Southern Weighing and Inspection Bureau, or the Western Weighing and Inspection Bureau, record of receipts from all sources, of all disposition and of tonnage on hand of Logs and manufactured products. Further, to furnish affidavit when required as to the accuracy of such records. In the event of failure or refusal to keep such records, the application of rates as provided, in paragraph (f) shall be denied and shipments handled in accordance with provisions of paragraphs (a), (b), (c), (d) and (e). |
| 2 | Certificate to be attached to claims | Claims must be accompanied by certificate in following form:<br>Tender is hereby made to the Illinois Central Railroad Co., The Yazoo and Mississippi Valley Railroad Co. and or Gulf and Ship Island Railroad Co. (as the case may be) of paid freight bills numbered and dated as specified below for the purpose of securing application of rates as provided in The Y. and M. V. R. R. Co., I. C. R. R. Co., or G. & S. I. R. R., Tariff No. 780-A, I. C. C. No. 7748 on the commodity covered thereby. This tender is made in good faith and with the specific guarantee on our part that such rates may legally be applied under the rules of said railroads as published in their Tariff No. 780-A, I. C. C. No. 7748 issued October 29, 1931, or supplements thereto.<br>Paid Freight Bills ..... Pro. No. ..... Date ..... Manufacturing Point .....<br>(Signature of claimant) ..... |
| 3 | Changes in rates and rules | In the event changes are made in Rates and Rules published herein after the Logs are shipped from points of origin, the Rates and Rules in effect on date of shipment from points of origin will apply. |
| 4 | Change of ownership of manufactured products | (a) The paid freight bills covering Logs may be used to secure application of rates as authorized under this Tariff where manufactured products are transferred by bona fide sale only when accompanied by certificate in the following form:<br>This is to certify that there has been a bona fide sale of .....<br>(insert manufactured product) from ..... (insert manufacturer) to the undersigned, and such manufactured products or products manufactured therefrom consisting of ..... was forwarded over the ..... Railroad consignor<br>(insert name of shipper) and ..... (insert name of manufacturer) is entitled to application of rates as authorized in Tariff ....., supplements thereto or reissues thereof on the tonnage contained in the following cars.<br>Car No ..... Commodity ..... Weight ..... Date Shipment Moved .....<br>.....<br>(Signature of shipper of manufactured products)<br>(b) When claims are made and certificate of this kind accompany claims, copies of bills of lading covering such outbound shipments will not be required. |
| 5 | Minimum charge | The minimum charge for carload shipment shall be Fifteen ($15.00) dollars per car. |
| 6 | Joint Rates | The joint rates published herein include all charges for switching, drayage or other transfer services at intermediate interchange points on shipments handled through and not stopped for special services at such intermediate interchange points. |
| 7 | Rates on Articles shipped out | The rates shown on page 6, herein apply only when the article shipped out is forwarded from point of manufacture, at full published freight tariff rates. Rates shown on page 6, herein, inbound, do not apply when the article shipped out is forwarded from point of manufacture, on reconsigning, reshipping, proportional or transit rates. |
| 8 | Shipments from connecting lines | The rates shown on page 6 herein, also apply from junctions of The Yazoo and Mississippi Valley Railroad, Illinois Central Railroad or Gulf and Ship Island Railroad, with connecting lines, on shipments originating at points on connecting lines from which no through rates are published, subject to the rules herein. |

## RULES AND REGULATIONS -Continued

| Rule No. | SUBJECT | INSTRUCTIONS |
|---|---|---|
| 9 | Combination Rates | The rates shown on page 6 herein, are not subject to Rules for Constructing Combination Rates as provided in Agent B. T. Jones' Freight Tariff No. 228, I. C. C. No. U. S. 1, and by supplements to or successive issues of said publication. |
| 10 | Supervision and inspection | The traffic handled at the rates and under the rules shown in this tariff shall be subject to the supervision of an inspector or inspectors who shall have access to the records of the railroads and of the shippers for the purpose of determining the accuracy of the documents submitted in support of claims for protection of the rates shown in this tariff.<br>Among other duties, it shall be the duty of the Inspector to:<br>(a) Check, compare and certify the inbound roads freight bills.<br>(b) Check the records of the railroads and shippers for the purpose of determining the actual character and weight of the outbound shipments, in order that the correctness of the claims may be fully shown. |
| 11 | Time Limit | Shipments of outbound tonnage must be made within one year from the date of paid freight bill covering inbound movement. |
| 12 | Terminal, transit and other privileges and charges. | In the absence of specific provision to the contrary shipments transported under this Tariff will be subject to all terminal charges and allowances relating to:<br>Arbitraries — Diversion — Inspection — Storage<br>Car Rentals — Drayage — Mileage on Private Cars — Switching<br>Car Service — Grading — Milling — Transit Privileges<br>Demurrage — Handling — Reconsignment — Wharfage<br>together with all other privileges, charges, and rules which in any way increase or decrease the amount to be paid on any shipment between points named in this Tariff or as the same may be amended or which increase or decrease the value of the service to the shipper as provided in tariffs published and lawfully on file with the Interstate Commerce Commission.<br>In the absence of specific provisions in this Tariff to the contrary, property destined to points beyond the tracks of The Yazoo and Mississippi Valley R. R. Co., Illinois Central Railroad Co., and or Gulf and Ship Island Railroad Company is entitled to such privileges and will be subject to such charges as provided in tariffs and supplements thereto published and lawfully on file with the Interstate Commerce Commission of the carriers granting the privilege and performing the service. |

| | | |
|---|---|---|
| | | forming the service. |
| 13 | Validity of paid freight bills reshipping certificate | In instances where the shipper at the transit point for commercial reasons forwards shipments from the transit point in the name of another party, firm or corporation, the actual transit shipper must add to the reshipping certificate quoted above the following:<br>"For commercial reasons the shipment from.....<br>(insert name of transit point) in car.....<br>(insert car initial and number) shows consignor as follows<br>.....<br>(Signature of Shipper) |
| 14 | Substitution of paid freight bills | The substitution of other freight bills for those previously used and cancelled in connection with Logs, handled under these transit arrangements is not permitted. Except that in case of bona fide error, upon application of the transit user to the Southern Weighing and Inspection Bureau the substitution of proper freight bills and the necessary correction of the transit account will be permitted, subject to the following:<br>(a) The freight bill substituted shall be one that had transit value at the date of movement from the transit point.<br>(b) The freight bill substituted shall be for one that had no transit value in connection with the outbound movement for which surrendered. |

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## RULES AND REGULATIONS—Concluded

| Rule No. | SUBJECT | INSTRUCTIONS |
|---|---|---|
| 15 | Minimum and estimated weights | (a) **Minimum Weights**— The following minimum weights apply on logs: |

| IN CARS OF | THE MINIMUM CARLOAD WEIGHT IS |
|---|---|
| Less than 40,000 pounds marked capacity | Marked capacity of car. (See paragraph (b):) |
| 40,000 pounds or greater capacity | 40,000 pounds. (See paragraph (b).) |

Cars must not be loaded in excess of ten per cent above their marked capacity.

(b) Estimated Weights—On shipments of logs, moving between points where actual weight cannot be ascertained at point of shipment, or at destination, or in transit, the following estimated weights will apply, subject to the minimum weights specified in paragraph (b), owners to furnish invoice of certificate showing the number of feet and kind of logs shipped:

| | | | |
|---|---|---|---|
| Ash | 10,000 pounds per 1000 feet | Gum | 10,000 pounds per 1000 feet |
| Chestnut | 10,000 pounds per 1000 feet | Hickory | 14,000 pounds per 1000 feet |
| Cottonwood | 10,000 pounds per 1000 feet | Maple | 10,000 pounds per 1000 feet |
| Cypress | 10,000 pounds per 1000 feet | Oak | 11,000 pounds per 1000 feet |
| Logwood | 10,000 pounds per 1000 feet | Pine | 10,000 pounds per 1000 feet |
| Elm | 11,000 pounds per 1000 feet | Poplar | 10,000 pounds per 1000 feet |
| | | Sycamore | 10,000 pounds per 1000 feet |

(c) In the event there is a deficit between the actual weight and the minimum weight, applying in connection with the carload rate to the manufacturing point proper, such deficit shall be charged for on basis of the carload rate lawfully applicable on commodity contained in the car to manufacturing point when for disposition other than for manufacture and reshipment of the product via the Illinois Central Railroad, The Yazoo and Mississippi Valley Railroad and/or Gulf and Ship Island Railroad. In no case shall the total charges per car be less than would result from the application of the carload minimum weight provided herein at rates published in Tariff. (See Rule 1, pages 3 and 4.)

agent must specify kind of Logs shipped.

## RATES OF FREIGHT

### Applying On

Logs, Carloads, except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion, when for manufacture and reshipment via the Illinois Central Railroad, The Yazoo and Mississippi Valley Railroad and or Gulf and Ship Island Railroad.

(For Application of Rates and Rules Governing, see pages 3 to 6, inclusive)

| DISTANCES | In Cents per One Hundred Pounds | DISTANCES | In Cents per One Hundred Pounds |
|---|---|---|---|
| 5 miles and less | 4 | 150 miles and over 125 | 9½ |
| 10 miles and over 5 | 4 | 160 miles and over 150 | 9½ |
| 15 miles and over 10 | 4 | 175 miles and over 160 | 10 |
| 20 miles and over 15 | 4½ | 180 miles and over 175 | 10 |
| 25 miles and over 20 | 4½ | 190 miles and over 180 | 10 |
| 30 miles and over 25 | 5 | 200 miles and over 190 | 10 |
| 35 miles and over 30 | 5 | 220 miles and over 200 | 10½ |
| 40 miles and over 35 | 5½ | 225 miles and over 220 | 10½ |
| 45 miles and over 40 | 6 | 235 miles and over 225 | 11 |
| 50 miles and over 45 | 6½ | 240 miles and over 235 | 11½ |
| 55 miles and over 50 | 6½ | 250 miles and over 240 | 11½ |
| 60 miles and over 55 | 7 | 260 miles and over 250 | 12½ |
| 70 miles and over 60 | 7 | 265 miles and over 260 | 13 |
| 75 miles and over 70 | 8 | 270 miles and over 265 | 13 |
| 80 miles and over 75 | 8 | 275 miles and over 270 | 13 |
| 85 miles and over 80 | 8 | 280 miles and over 275 | 13 |
| 90 miles and over 85 | 8½ | 300 miles and over 280 | 13 |
| 100 miles and over 90 | 8½ | 315 miles and over 300 | 13½ |
| 120 miles and over 100 | 8½ | 325 miles and over 315 | 13½ |
| 125 miles and over 120 | 9 | | |

### TABLE OF DISTANCES

For distances to use in connection with the rates published herein, refer to the I. C. R. R. Co. Tariff 36-E, I. C. C. No. 7014 The Y. and M. V. R. R. Co. Tariff 30-C, I. C. C. No. 7506 and G. and S. I. R. R. Circular G-1082, I. C. C. No. 1151, supplements thereto or successive issues thereof.

(Authority No. A-9257)

[fol. 884] Mississippi Railroad Commission

Regular Meetings First Tuesday Each Month

C. M. Morgan, President, Hattiesburg, Miss.; D. W. Brown, Commissioner, Fulton, Miss.; C. C. White, Commissioner, Jackson, Miss.; J. W. Williams, Secretary, Jackson; M. C. Moore, Rate Expert; N. B. Huey, Asst. Rate Expert; Lillian Runnells, Stenographer.

STATE OF MISSISSIPPI,
County of Hinds:

I, J. W. Williams, do hereby certify that I am Secretary of the Mississippi Railroad Commission and as such am the legal custodian of the records of said Commission and that the foregoing is a true and correct copy of the indicated portion of the afore mentioned tariffs duly filed with the Mississippi Railroad Commission.

Witness my hand and official Seal of the Mississippi Railroad Commission this the 16th day of February 1933.

J. W. Williams, Secretary. (Seal Mississippi Railroad Commission.)

JWW:R.

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[fol. 885] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Feb. 24, 1933

United States, one of the defendants in the above-entitled case, for answer to the petition filed herein against it answers and says:

I

United States admits for the purposes of this suit that the matters, things and conclusions alleged in paragraphs I to X, inclusive, of the petition are true.

II

For answer to paragraph XI of the petition, United States disclaims any knowledge of the matters therein alleged, and is unable, therefore, either to admit or deny the same, but upon trial of this cause will demand strict proof thereof. Further answering said paragraph XI, United States denies that said order of the Interstate Commerce Commission will result in illegally or unlawfully [fol. 886] jeopardizing or affecting petitioner's business.

III

United States alleges that the matters, things and conclusions set forth in paragraphs XII to XIX, inclusive, of the petition are irrelevant, incompetent and immaterial to any issue which may properly be raised before this Court concerning the validity of said order, and alleges further that said allegations present facts which, even if true, are beyond the jurisdiction of this Court to consider in its capacity as a judicial and not an administrative tribunal. Further answering said paragraph XIX, United States alleges that since the petition herein was filed, said Commission reopened said proceedings, held further hearing and gave full opportunity to petitioner and all other interested parties to present any facts relative to such alleged changes in conditions, economically or otherwise, as might bear upon the validity of the order in question, all of which is set forth and alleged in the supplemental bill of complaint recently filed herein by petitioner.

IV

United States denies that the allegations contained in paragraphs XX and XXI of the petition are either relevant or material to the validity of said order of the Commission.

V

United States, for answer to paragraph XXII of the petition admits that petitioner filed with said Commission its [fol. 887] petition for intervention and further hearing; and affirmatively alleges that said petition was granted by said Commission and further hearings in said proceedings were held and conducted by the Commission, at which petitioner was given full opportunity to present its testi-

mony and argument, all of which is shown and alleged in petitioner's supplemental bill recently filed herein.

VI

Answering paragraphs XXIII to XXV, inclusive, of the petition, United States denies the allegations contained therein, and denies that the Commission's order is unreasonable, arbitrary, invalid or unlawful for the reasons set forth in said paragraphs, or for any of them.

VII

Answering paragraph XXVI of the petition, United States denies that the Commission's said order will cause irreparable injury or any legal damage whatever to petitioner.

Except as herein expressly admitted, United States denies each and every allegation contained in the petition, and in each of the separate paragraphs and sub-divisions thereof.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and the petition dismissed with costs to the petitioner, and that it have the benefit of such other and further orders, decrees, [fol. 888] or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 889] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

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[fol. 890] [File endorsement omitted.]

In United States District Court

In Equity. No. 695

[Title omitted]

Answer of United States of America to Supplemental Bill of Complaint—Filed Feb. 24, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the supplemental bill of complaint filed herein against it answers and says:

I

United States admits that the allegations contained in the opening paragraph and paragraph 1 of the supplemental bill are true, with this exception: it denies the conclusion in the first subdivision of said paragraph 1 that the Interstate Commerce Commission "attempted to invade the domain of the State of Florida and to disestablish the scale of lawful rates" therein mentioned. And United States further admits that Exhibit C to the supplemental bill is a true copy of the petition for further hearing mentioned in [fol. 891] the last subdivision of said paragraph 1 as having been filed with the Commission on January 21, 1933, and denied by the Commission on February 8, 1933.

II

For answer to so much of the opening subdivision of paragraph 2 of the supplemental bill as constitutes a re-averment of the matters and things averred in complainant's original bill, United States hereby respectfully refers to, repearts, re-avers and adopts its answer to said original bill.

For answer to subdivision (a) of paragraph 2, United States denies that the conclusion alleged therein is relevant, material or proper as an allegation of fact, and, therefore, neither admits nor denies it.

Answering subdivision (b) of said paragraph 2, United States denies that the facts of record before said Commission lacks any essential or jurisdictional fact necessary to support the Commission's said order, and denies that the order is unlawful for anything alleged in said subdivision of said paragraph.

Answering subdivisions (c) and (d) of said paragraph 2, United States denies that the matters and things therein alleged, even if true, are relevant or material to any issue which may be properly raised before, or decided by, this Court in determining whether said order of the Commission is lawful.

Answering subdivision (e) of said paragraph 2, United States denies that said order of the Commission will result in irreparable injury or any legal damage whatever to complainant.

[fol. 892] III

United States disclaims any knowledge of the allegations contained in paragraph 3 of the supplemental bill, and, therefore, neither admits nor denies them.

IV

United States denies each and every allegation contained in paragraph 4 of the supplemental bill.

Except as herein expressly admitted, United States denies each and every allegation contained in the supplemental bill of complaint, and in each of the separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the supplemental bill of complaint, United States prays that the relief therein prayed be denied and the supplemental bill of complaint and the original petition be dismissed with costs to the complainant, and that it have the benefit of such other and further orders, decrees or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 893] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

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[fol. 894] Recital as to Answer of I. C. C.

Note: (Item No. 35.) By agreement of Counsel and with the consent of the Court the answer of the Interstate Commerce Commission to the supplemental bill of complaint in Case No. 691, Wilson Cypress Lumber Company et al. v. United States et al., was taken as and stands for answer also to the supplemental bill of Complaint in Case No. 690 and 695.

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[fol. 895] [File endorsement omitted]

[fol. 896] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Feb. 24, 1933

To the Honorable, the Judges of said Court:

Now comes Atlantic Coast Line Railroad Company, a corporation organized and existing under the laws of the State of Virginia, and respectfully represents unto this Honorable Court as follows:

1

Your petitioner is the railroad company whose rates are referred to in the above mentioned bill. It is engaged in interstate and intrastate transportation by railroad in the States of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia. It has about twenty-one hundred (2,100) miles of line in the State of Florida. Its total mile-[fol. 897] age is something in excess of Fifty-one hundred (5100) miles. It is interested in this proceeding and desires to intervene therein for the protection of that interest.

Wherefore, your petitioner prays that it be allowed to intervene in this cause, pro interesse suo.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Alston, Alston, Foster & Moise, Its Attys.

[fol. 898] [File endorsement omitted]

[fol. 899] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY, INTERVENOR—Filed Feb. 24, 1933

To the Honorable, the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, intervenor in this cause and hereinafter referred to as "In-

tervenor", and for answer to the petition in this cause says:

I

Intervenor believes it to be true that petitioner is a corporation, organized and existing under the laws of the State of Florida, having its principal office in Jacksonville, and that it is engaged in the business of buying hardwood logs from the owners thereof after the same have been cut in Florida and either transporting the same or causing [fol. 900] them to be transported to its mill in Jacksonville and there manufacturing and selling lumber from its mill. While the said mill is located exclusively on the lines of the Atlantic Coast Line Railroad Company, it is connected with all the other lines of railroad running into Jacksonville, including Seaboard Air Line, Southern Railway System and Florida East Coast Railroad Company, as fully as located thereon. Switching charges are absorbed by each of these roads.

II

Intervenor admits the allegations of paragraph II.

III

Answering paragraph III, intervenor says that at a time antedating 1914, it did establish a scale of rates in Florida for the transportation of logs, which came to be known as the Cummer scale of rates, but denies that same were voluntarily continued in effect until February 9, 1929.

IV

The allegations of paragraph IV are admitted.

[fol. 901]

V

Intervenor admits that the Honorable the Supreme Court of the United States, in the case of State of Florida v. United States, 282 U. S. 194, reversed the findings which this court had previously made sustaining the order of the Interstate Commerce Commission referred to in paragraph IV. The terms and conditions of said reversal will be found in the opinion itself to which reference is made.

VI

Answering paragraph VI. Intervenor did reestablish the Cummer scale of rates on April 10, 1931 giving notice; however, at the same time to shippers and others at interest therein, that the rates under said Cummer scale were unjust and unreasonable and that it was undertaking to have the same set aside and annulled.

VII

Intervenor refers to the report and order of the Interstate Commerce Commission entered in the case of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company, 186 I. C. C. 157 (Docket No. 18364), decided July 5, 1932 for its contents.

[fol. 902]

VIII

The allegations of paragraph VIII of the petition are admitted by this Intervenor.

IX

Intervenor admits the allegations of paragraph IX of the petition.

X

Answering paragraph X of the petition Intervenor avers that this court entered an order on September 14, 1932 suspending the Interstate Commerce Commission's schedule of rates for a period not exceeding sixty (60) days. The order is referred to for its terms.

XI

Intervenor avers that the mill plant at Jacksonville, Florida which is operated by petitioner and which is referred to in paragraphs I and XI of its petition, is not owned by it but that it is leased from another who is the owner. Intervenor has no information as to the number of persons employed in cutting logs in the interior of [fol. 903] Florida for shipment to petitioner's mill. Intervenor is informed and believes that petitioner purchases logs after they have been cut.

Intervenor states that petitioner began operation of its mill in June, 1930 which was while the rates fixed by the Interstate Commerce Commission on logs intrastate in

Florida were in force and which rates are the same as those now involved, and continued to do business with those rates in existence until they were replaced by the rates under the Cummer scale in April, 1931, in the circumstances above set out.

Intervenor alleges that for the period from June 30, 1930 to March, 1931, inclusive, the Buffum Company shipped an average of 9 cars of logs per month over its lines under the scale of rates fixed by the Interstate Commerce Commission. Intervenor cannot, for lack of information, answer as to the number of cars shipped by Buffum Company by truck and water.

[fol. 904] Intervenor says that during the period from April 9, 1931 to August, 1932, inclusive, the Buffum Company shipped over the rails of Atlantic Coast Line an average of 36 cars of logs per month. During the months of September, 1932, its shipments were 39 cars of which 12 cars moved during the latter part of September. From October 1, to October 15, 1932, the Buffum Company shipped by rail over the Atlantic Coast Line 17 cars. This intervenor alleges that during the period from June, 1930 to March, 1931 (when the Interstate Commerce Commission's scale of rates was in force), the Buffum Company shipped into its mill over railroad lines other than the Atlantic Coast Line 114 cars of logs and it also shipped during that period 89 cars of logs into its mills over the Atlantic Coast Line. Intervenor says that the rates under which the above mentioned 114 cars of logs moved into Buffum Company's mills over lines other than Atlantic Coast Line, were practically equivalent to the rates under the scale ordered into effect intrastate in Florida by the Interstate Commerce Commission in its proceeding, Docket No. 18364; so that the scale of rates now under consideration in this cause and prescribed by the Interstate Commission has been proved by actual test by the Buffum Company to be just and reasonable.

This intervenor is unable for lack of information, to admit or deny that about September 12, 1932, in expecta-
[fol. 905] tion that the rates would be increased under orders of the Interstate Commission, the cutting of logs at interior Florida points adjacent to Intervenor practically ceased. It denies that petitioner's mill has stopped operating.

Intervenor denies that any action of the said Buffum Company in operating or not operating its mill has been controlled by the action of Atlantic Coast Line Railroad Company. On the other hand, it alleges that during the period from June, 1930 to March, 1931, when the Interstate Commission's scale of rates was in force, the logs moved to the Buffum mill by lines other than Atlantic Coast Line amounted to 114 cars as compared with 89 cars over Atlantic Coast Line. The rates applicable to such movements of logs on the other lines were substantially higher than the rates under the Cummer scale of rates.

XII

The hearing before the Interstate Commission continued up to July, 1931.

A motion to reopen this case before the Commission was filed by the State of Florida, et al. on August 18, 1932 and was denied on August 25, 1932.

The Commission did order on October 21, 1932 a reopening of this case for the purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing, the circumstances connected with and the conditions which occasioned such changes; all of which is set out in the order itself which is referred to. That reopened hearing was had on November 21 and 22nd and the Commission handed down its report and order on January 9th, 1933, reaffirming its original report and order. This was done after considering the effect of the matters and things set out in paragraph XII of intervenor's petition. The action of the Commission was founded on ample evidence.

[fol. 906] The railroads have been operating not only under the stress of the depression, but also under the stress of new kind of competition—trucks and busses—with the result that Atlantic Coast Line is operating at a loss, has been operating at a loss for some time. Losses of Atlantic Coast Line and other railroads are so great that a member of the Interstate Commerce Commission in a recent decision has stated that:

"* * * we must recognize the fact that we face a railroad crisis so acute that the Government is called upon to loan money, not only to get the carriers through it, but to

remove so far as possible a menace to financial, insurance, and fiduciary institu-ons, which are heavy holders of the underlying securities of the carriers. The national well-being—directly, bank depositors, insurance-policy holders, public institutions, and credit—has become deeply involved."

Intervenor denies that the allegations of paragraph XII of the petition in this cause correctly states the circumstances of the filing of new tariffs by certain railroads fix-[fol. 907] ing rates on logs charged under "transit rules and regulations."

Intervenor denies that the situations carried by those tariffs are similar to the inbound movement of logs to petitioner's mill and the outbound movement of lumber over the line of the inbound carrier.

It denies that the transit condition is a fiction.

It denies that the rate comparisons set out in paragraph XII accurately represent the relation between those transit rates and the rates under the Cummer scale.

Intervenor avers that a net transit rate operates substantially as follows:

(a) A shipper makes a shipment of rough material, say, logs from point X on the lines of the carrier to point Y on the lines of the same carrier; the latter point being the point at which the rough material is to be manufactured; and known as the transit point.

(b) The shipper pays the local rate on the rough material from point X to Point Y and gets a receipted freight bill therefor, which shows the tonnage, point of origin, [fol. 908] point of destination, the date, the rate and the amount paid. The rate paid by the shipper is not the net transit rate referred to in paragraphs XII, XIII, XIV, XVII, and elsewhere in the petition, but is the regular local rate which is approximately twice as much as the net transit rate under normal loading. The difference between the two rates may be very much greater under extraordinary loading, if excess in proportion is not charged.

(c) The product is manufactured and the shipper ships the manufactured product over the lines of the originating carrier. The carrier charges the regular rate on the manu

factured product from the transit point to the point of destination of the manufactured product.

(d) The shipper pays the freight on the outbound movement and then the carrier recognizes in favor of the shipper a claim against it for the difference between the local rate paid on the shipment of rough material from the point of origin (X) to the transit point (Y) and from the transit rate shown by the filed tariffs from point X to point Y.

[fol. 909] (e) But the shipper is allowed this claim only for such portion of the rough material as has been manufactured. For instance, 200,000 pounds of logs have been shipped. Lumber has been manufactured from only two-thirds of that amount and is shipped out within the time specified in the tariffs, then the shipper must pay the local rate on that rough material which has not been manufactured into lumber and shipped out. The time is limited in the tariff for the shipment of the manufactured product, and in some of the tariffs, bond is required to be given by the shipper for the performance of the transit conditions.

The tariffs require as a condition to acknowledgment of the claim of the shipper against the carrier, varying schedules of percentages of the weight of the rough material shipped in to be manufactured into various products. For instance:

[fol. 910] When logs are manufactured into lumber, the lumber must equal 33⅓% of the weight of the logs shipped. If the logs are manufactured into other kinds of products there are other and different percentages, such as flooring chemically treated, the percentage is 18%; box shooks it must be 33⅓%. There are many of these percentages. So that the comparisons set out in paragraph XII of the petition in this cause do not at all represent the relation between the two classes of rates—local and transit, or—transit and Cummer scale.

XIII

This Intervenor makes the same answer to paragraph XIII of the petition as it has made to paragraph XII.

XIV

Intervenor makes the same answer to paragraph XIV of the petition as it has made to paragraphs XII and XIII.

XV

Intervenor makes the same answer to paragraph XV of the petition as it has made to paragraphs XII, XIII and XIV.

[fol. 911]

XVI

Answering paragraph XVI, of petition, Intervenor alleges that the Cummer scale is a mileage scale of rates applicable to brackets of miles up to 170 miles and applies to minimum weight of 50,000 pounds, with excess in proportion.

The other allegations of paragraph XVI this Intervenor is unable to admit or deny for lack of information.

XVII

Answering paragraph XVII, this intervenor denies that the comparisons set out in paragraph XVII correctly show the relation of the Cummer scale of rates to the scale of rates ordered into effect by the Interstate Commerce Commission; and makes the same answer to the remaining portion of said paragraph as it has made to paragraph XII.

XVIII

The allegation in paragraph XVIII that "such newly reduced logs rates are published in some instances as transit rates and in other instances as local rates" is too general and too indefinite to be answered.

[fol. 912] The rates under the Cummer scale are local rates; not transit rates; and they are not the same kind nor have they the same characteristics as those hereinbefore described as attributable to transit rates.

The Interstate Commerce Commission, in arriving at the conclusion that the rates under the Cummer scale were unjust, unreasonable and discriminatory against interstate commerce, made comparisons of the rates under the Cummer scale with many other kinds of rates and also made a cost study of transporting logs over the Atlantic Coast Line in Florida; and found that the rates under the Cummer scale did not pay the actual cost of such transportation even when taxes and return on investment were not considered. The findings by the Commission were made on

ample evidence and after long and faithful consideration; and were made by the entire Commission.

XIX

Intervenor denies the allegations of paragraph XIX and shows that at the reopened hearing before the Interstate Commission at Jacksonville, Florida on June 10, 11 and 12, 1931, the Railroad Commissioners of Florida were represented by their counsel, accountant and rate expert; that [fol. 913] the Jacksonville Traffic Bureau, Jacksonville Chamber of Commerce and Municipality of Jacksonville were represented and that there were various representatives of shippers including all of the shippers there described as "intervening Florida log shippers"; and also representatives of Standard Container Manufacturers Association and representatives of other crate manufacturers and a representative appeared for Southern Cypress Manufacturers Association.

In the original hearing before the Interstate Commission the Florida Commission appeared through its chairman, its counsel and its accountant.

XX

Answering paragraph XX Intervenor says that the Interstate Commerce Commission is empowered by § 13(4) of the Interstate Commerce Act to remove unlawful discrimination by prescribing "the rate, fare or charge or the maximum or minimum or the maximum and minimum thereafter to be charged," etc.

The order of the Interstate Commission is based upon ample evidence not only justifying the decision but, as Intervenor respectfully avers, upon evidence necessarily requiring the order entered.

[fol. 914] XXI

Intervenor denies the conclusions stated in paragraph XXI of the petition.

XXII

Answering paragraph XXII. Intervenor admits that the petitioner filed a bill described by it by way of intervention in the case of Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, I. C. C. Docket

No. 18364. Said petition was filed after the Commission had entered its order of July 5, 1932 and also after the Commission overruled the motion made August 18, 1932 by the State of Florida, et al. for reopening and reconsideration.

It is respectfully insisted by this Intervenor that this court has no jurisdiction to grant an order restraining the Interstate Commission's order, pending the Interstate Commerce Commission's action on the petition which it has brought and which the petitioner in this cause avers requires "a long time" for its determination.

Such an injunction would work irreparable loss and damage to Intervenor, whose condition has been hereinbefore referred to.

[fol. 915]

XXIII

Paragraph XXIII requires no answer.

XXIV

Intervenor denies the allegations of paragraph XXIV.

XXV

Intervenor denies the allegations of sub-paragraph (1) of paragraph XXV and further says that the Cummer scale of rates is less than one-half of the corresponding interstate scale fixed by the Commission as reasonable. The great volume of evidence offered before the Commission and on which the Commission acted justified and required the order entered by it.

Answering each of the other subparagraphs (2-43, both inclusive) of paragraph XXV, Intervenor denies each and every one of them and for further answer thereto says:

The petition in this cause before the Commission was filed on May 3, 1926. The first hearing was hade thereon at Valdosta, Georgia on October 20, 1926. At said hearing there [fol. 916] appeared three members of the Georgia Public Service Commission: James A. Perry, O. R. Bennett, and W. R. McDonald, and as well the rate expert, E. M. Price. For the Florida Railroad Commission there appeared R. Hudson Burr, A. S. Wells, and E. S. Matthews, members thereof; Fred H. Davis, Attorney-General; and J. H. Tench, Rate expert. There appeared counsel for Cummer Cypress Company, Wilson Cypress Company and Putnam Lumber

Company; representatives of Jacksonville Traffic Bureau, Georgia-Florida Saw Mill Association and Roofer Manufacturers Club of Georgia. Counsel for Southern Pine Association, Brooks Scanlon Corporation; and representatives of Savannah Traffic Bureau, of Board of Trade and City of Savannah, Florida Traffic Association, Seaboard Air Line Railway, Central of Georgia Railroad, Southern Railway, Atlantic Coast Line Railroad Company, Georgia, Southern and Florida Railroad, American Short Line Railroad Association and the Georgia and Florida Railroad.

Much oral evidence was taken and a great many exhibits [fol. 917] were offered. There was a further hearing on January 18-21, 1927 in Jacksonville, Florida. A great deal more evidence was taken, both orally and by exhibits. The Examiners for the Commission made their proposed report and the Commission made its finding, holding that the Cummer scale of rates was unjust, unreasonable, and a burden upon interstate commerce, and made a schedule of rates supplanting the Cummer scale. That schedule was the same schedule made by the Commission in its report and order of July 5, 1932.

Through a great deal of litigation that order became effective on February 9, 1929, it having been sustained by this court. It was then set aside by the Supreme Court of the United States for procedural causes on January 5, 1931 by opinion and order of the court entered in case of State of Florida v. United States, 282 U. S. 194.

The case was reopened before the Commission and further evidence was taken. It was tried practically de novo. [fol. 918] Evidence was taken in the reopened hearing on June 10, 11, and 12, 1931 at Jacksonville, Florida. The hearing was adjourned to Washington, D. C. and further evidence by way of oral testimony and exhibits was given on July 20 and 21, 1931. The case was submitted to the Examiners for the Commission on briefs September 25, 1931. The examiners made a report; exceptions were filed thereto and argued on February 3, 1932. The Commission made its final report and order on July 5, 1932.

Motion to postpone the effective date of that order was made and denied. Motion to reopen the case for rehearing and further consideration was made and denied.

Out of those proceedings come a vast volume of effort, evidence, study and consideration of the matters and things involved.

The Commission has found that

"* * * the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida."

[fol. 919] It has found that the freight-traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was only 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using the year 1929 as illustrative, it found that freight-service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight-service locomotive-miles in Florida were 30.92 per cent of those for the system, including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida.

It found that the operating expense for transporting a car of logs intrastate in Florida for the average distance of 81.36 miles was $17.07 against gross revenue of $15.12; that when taxes and return on investment were included the cost was $24.69 against revenue of $15.12.

It has also found that the gross revenue for handling 18,602 cars of logs which moved over the Atlantic Coast [fol. 920] Line in Florida during the period of time beginning February 8, 1929 and ending January 31, 1931, when the rates fixed by the Interstate Commission in this cause were then applicable, was $571,508.94; whereas if those cars had moved under the Cummer scale the aggregate gross revenue would have been $281,225.75. In other words, the Cummer scale of rates produces less than one-half of what the scale fixed by the Commission produces. The scale of rates fixed by the Commission in its order of July 5, 1932 is the same as that established by it for interstate movements of logs from Florida to Georgia and which is now the interstate scale and which is unchallenged.

The Commission in its findings (186 I. C. C. 172) shows for a period of five years, 1926-1930 the total system traffic decline and the decline in the system log traffic in tons and cars.

The Commission found that there were 21,000,000,000 feet of pine timber standing in Florida on July 1, 1931 (21.913 billion feet). It was estimated that the annual production of cypress in Florida is around 200,000,000 feet.

[fol. 921] The Commission found that the defendant's freight-traffic manager testified that if Atlantic Coast Line transported 40 per cent of the logs to be produced in Florida from timber now standing it would lose $2,779,968 if forced to transport that timeber under the Cummer scale of rates; that being the difference between the Cummer scale and the interstate scale, based on average distance, etc.

The Commission found that

"The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future."

The Commission found:

"We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines."

[fol. 922] The Commission affirmed the finding of division 4 (p. 189 printed report July 5, 1932). That is the decision which is reported in 146 I. C. C. at 717. The Commission had in its first finding found that the rates under the Cummer scale were unreasonable and discriminatory and in 146 I. C. C. at page 724 it said:

"It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonable compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a l-ding of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line."

At page 720 of its original report in this case, the Commission said:

"The record shows 128,163 carloads containing approximately 700,000,000 feet of timber transported under the

Carpenter-O'Brien contract from 1915 to 1926, both inclusive, * * *

The record also shows that intervenor

[fol. 923] "Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties Florida, estimated to contain 1,207,432,000 feet."

The Commission finds in its last report that the production of pine timber in Florida during the six years 1925-1930 totaled 4.564 billion feet and the regrowth in those six years was 2.129 billion feet, or a net depletion of 2.435 billion feet.

The loss resulting from the application of the Cummer scale of rates to this Intervenor, if that scale should remain in effect, would be so great as to completely destroy it.

The above stated facts and others set out in its report have been found by the Commission on ample and undisputed evidence; evidence which consisted not only in the comparison of rates, but also of accounting testimony and on the evidence of men who are producing the largest amount of lumber, shipping the largest amount of logs and who own the largest amounts of timber.

[fol. 924] It is respectfully submitted that the Interstate Commission's finding of unreasonableness of the Cummer scale of rates and of unjust discrimination worked by it against interstate commerce is supported by clear and definite findings which in turn are based upon a mass of uncontradicted evidence sufficient not only to justify but to require the Commission's finding.

Wherefore, this intervenor respectfully prays that the petition of F. S. Buffam Company, Inc. be dismissed and the relief prayed for denied.

Respectfully Submitted, Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attys. for A. C. L. R. R.

Feb. 24, 1933.

[fol. 925] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 926] [File endorsement omitted]

[fol. 927] IN UNITED STATES DISTRICT COURT

No. 695. In Equity

[Title omitted]

MOTION TO DISMISS OF ATLANTIC COAST LINE RAILROAD COMPANY, INTERVENOR—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, intervenor in the above mentioned cause, and moves to dismiss the petition of the petitioner in this case and for grounds of motion says:

A

There are pending before this court two other bills on the same subject matter (Nos. 690 and 691). These bills were brought by parties to the proceedings before the Interstate Commerce Commission. F. S. Buffum Company, Inc. was not a party to such proceedings. Its rights, if any it has, should be enforced by intervention in one or the other of the bills already filed.

[fol. 928]

B

Petitioner shows no adequate grounds for granting the relief prayed for.

C

The grounds for relief set up by petitioner include the allegation that important and vital changes have occurred since the hearing before the Interstate Commerce Commission as reported in 186 I. C. C. 157; that the knowledge is common that basic commodity prices persist at new low levels; that the reduction in railroad freight and passenger traffic, due to the rapid growth of motor vehicle and water competition has caused the railroad lines generally to cease their attempts to increase rates to make up for lost traffic and to inaugurate many widespread and drastic reductions in freight rates as the effective means of increasing their traffic and revenues in recognition of the fact that the price

of transportation must follow the general price level of the basic commodities transported.

The petitioner shows that those matters are not for consideration by this court in the first instance. They are for consideration by the Interstate Commerce Commission and until the Interstate Commerce Commission shall have considered the same and found thereon, this court has no jurisdiction over them.

[fol. 929]

D

The said petition sets up a number of traiffs filed by railroads other than the Atlantic Coast Line Railroad Company setting up schedules of rates for hauling logs interstate and those rates are alleged to be on a parity with or approximately on a parity with the intrastate rates on logs in Florida over the Atlantic Coast Line known as the Cummer scale of rates, and which were complained of in the proceeding before the Interstate Commerce Commission in its docket No. 18364; and that those rates under the schedules filed in August, 1932, have become effective.

Petition shows that this subject matter is not for consideration by this court in the first instance, but that the same is for consideration by the Interstate Commerce Commission and until said Commission shall have acted thereon, this court has no jurisdiction to act thereon.

E

Petition shows that said rates are in many instances transit rates; that is, they are rates on unmanufactured material shipped to points of manufacture and the manufactured product is to be shipped over the same railroad [fol. 930] line which brought the unmanufactured product to the point of manufacture, which is called the transit point; the transit rate is not the only reward of the carrier for the haul to the transit point.

The rates under the Cummer scale are not transit rates. Transit rates are usually about one-half of local rates.

It is for the Interstate Commerce Commission primarily to pass upon those facts and until the Commission shall have passed upon them, the court has no jurisdiction over the subject matter.

F.

Petitioner's petition shows that it began its business of manufacturing logs at the time when the Cummer scale of rates was not in operation, and when the rates fixed by the Interstate Commission in the order complained of were in effect, and which the litigation over the subject matter of rates was under way, and that the restoration of the rates prescribed by the Commission work no injury to the petitioner nor does it work any hardship upon it.

This Intervenor respectfully prays that the petition of petitioner in this cause be dismissed.

Respectfully submitted,

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

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[fol. 931] [File endorsement omitted]

[fol. 932] IN UNITED STATES DISTRICT COURT

No. 695

[Title omitted]

MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY TO DENY MOTION OF F. S. BUFFUM COMPANY, INC., TO FILE SUPPLEMENTAL BILL—Filed Feb. 24, 1933

Now comes Atlantic Coast Line Railroad Company, intervenor in the above stated cause, and respectfully moves this court to deny the motion of F. S. Buffum Company, Inc., to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief sought therein, and for grounds of motion says:

1

The additional matters set up in said supplemental bill are not sufficient to justify this court in granting the relief prayed, for that:

[fol. 933] (a) The supplemental bill which the plaintiff proposes filing shows that all the matters and things therein

mentioned have been considered by the Interstate Commerce commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commerce Commission has found that the matters and things set up in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its docket No. 18364.

(b) The record in this proceeding shows that F. S. Buffum Company, Inc., filed its petition with the Interstate Commerce Commission in October 1932, praying that the Commission reopen the proceeding in its docket No. 18364, for further hearing, and stay its order of July 5, 1932, pending rehearing and reconsideration as provided by the Interstate Commerce Act. The Atlantic Coast Line Railroad Company filed its response to said petition of F. S. Buffum Co. Inc.

(c) The Commission by its order of October 21, 1932 reopened said proceeding and rehearing was had thereon on November 21-22, 1932. A large amount of additional evidence was taken and arguments had at said rehearing. [fol. 934] By its report and order entered January 9, 1933, the Commission reaffirmed its previous findings and orders; and on full and ample evidence determined the issues in this cause against the complainant herein. The action of the Commission was after due consideration of all of the evidence and arguments offered at said rehearing.

(d) Thereupon the said F. S. Buffum Company, Inc. filed another petition with the Interstate Commission for postponement of the effective date of the Commission's orders of July 5, July 28, 1932 and January 9, 1933; and that the proceeding be reopened for further hearing and consideration. The said petition was considered by the Commission and denied by its order entered February 7, 1933.

(e) The record shows that like petitions have been filed by Wilson Cypress Company and Wilson Lumber Company of Florida and by the State of Florida and the Florida Railroad Commission; and that said petitions have been denied by order of the Commission entered February 13, 1933.

2

The record in this proceeding, including the plaintiff's supplemental pleadings shows that the action of the Interstate Commerce Commission was based on ample, relevant [fol. 935] and controlling testimony; and that the Cummer scale of rates have been determined to be, and are, unjust, unreasonable and confiscatory. These proceedings are in effect efforts to require the Atlantic Coast Line Railroad Company to continue in operation rates which are unjust, unreasonable and confiscatory.

3

This respondent respectfully prays that the motion of F. S. Buffum Company to file said supplemental bill of complaint be denied; and if the same be allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932, be allowed to go into effect on February 25, 1933 as ordered by the Interstate Commerce Commission.

Respectfully submitted,

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 936] [File endorsement omitted.]

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[fol. 937] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Atlantic Coast Line Railroad Company, intervenor in the above stated case and answers the supplemental bill of complaint, and for answer, says:

1

Intervenor admits that the Buffum Company filed its original bill as is set out in paragraph 1 of the supple-

mental bill. It denies that the Interstate Commerce Commission, by its order of July 5, 1932, attempted to invade the domain of the State of Florida, and alleges that said Commission after long, patient and unprecedented amount of hearings and considerations, determined that a certain scale of rates on certain kinds of logs moving over the At- [fol. 938] lantic Coast Line Railroad Company for distances up to 170 miles, is unjust, unreasonable and discriminatory against interstate commerce; and the said Commission proceeded to fix a scale of rates to be applied to such transportation of logs, in lieu thereof, which the Commission determined to be just and reasonable. The Commission acted under the authority conferred upon it by the Commerce Act with amendments thereto, which said Act was adopted in pursuance of the commerce clause of the Constitution of the United States. Said commerce clause of the Constitution of the United States and the acts made in pursuance thereof, are superior to the Constitution and laws of the State of Florida. Said proceeding had been under consideration by the Commission for almost seven years.

This intervenor admits that this court on September 14, 1932 entered an order of suspension referred to in paragraph 1 of the supplemental ball; and it admits that no final judgment or decree has been entered by this court in either of the cases therein referred to. It admits that the Interstate Commission on October 21, 1932 reopened the proceeding before it in its docket No. 18364 for the purposes set out in said supplemental bill. A hearing was had on said reopened proceeding on November 21-22, 1932 and the Com- [fol. 939] mission made its second report on January 9, 1933, reaffirming the findings made by it in its previous report of July 5, 1932, and vacated its order of October 21, 1932 suspending the order of July 5, and ordered that thereafter its said order of July 5, 1932 as amended by order of July 28, 1932, "shall remain in full force and effect until further order of the Commission from February 11, 1933." The latter date was later changed to February 25, 1933.

Intervenor admits that on January 21, 1933 complainant filed its petition with the Interstate Commission, seeking to postpone the effective date of said order and praying for further hearing and reconsideration and on February 7, 1933, the Commission denied said petition.

Under the rules of the Interstate Commerce Commission a second application for rehearing by the same party upon

the same grounds as a former petition or application which has been considered and denied will not be entertained. Intervenor further alleges that the said petition before the Commission was without merit.

[fol. 940] 2

Answering paragraph 2 of said supplemental bill, intervenor says that said supplemental bill undertakes to set forth certain of the contentions of the aforementioned petition for rehearing which was filed by this complainant with the Interstate Commerce Commission on or about January 21, 1933, referred to in paragraph 1 of said supplemental bill. The petition itself is referred to.

3

Answering paragraphs 3 and 4 of said supplemental bill, this intervenor denies the allegations of each of said paragraphs.

Wherefore, respondent having answered the allegations of said supplemental bill, prays that the same be dismissed and the prayers thereof be denied; that the injunction and restraining order prayed for in said supplemental bill be refused and that this respondent have such other and further relief as may be meet and proper.

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933..

[fol. 941] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

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[fol. 942] [File endorsement omitted]

[fol. 943] IN UNITED STATES DISTRICT COURT

No. 695

[Title omitted]

PETITION OF GEORGIA PUBLIC SERVICE COMMISSION FOR LEAVE TO INTERVENE IN THE ABOVE STATED CAUSE—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, and respectfully represents unto this Honorable Court that it was

the petitioner before the Interstate Commerce Commission in the proceeding in its Docket No. 18364, out of which the reports and orders of the Interstate Commission complained of in this proceeding originated; and prays to be allowed to intervene in this cause.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

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[fol. 944] [File endorsement omitted]

[fol. 945] IN UNITED STATES DISTRICT COURT

No. 695

[Title Omitted]

MOTION OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENER, TO DENY THE MOTION OF F. S. BUFFUM CO. INC., TO FILE SUPPLEMENTAL BILL OF COMPLAINT.—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor, and respectfully moves this court to deny the motion of F. S. Buffum Company, Inc. to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

1

The proceedings in this case show that all of the matters and things which are set out in the supplemental pleadings have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commission has found that the matters and things set out in [fol. 946] said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its Docket No. 18364.

2

The record in this proceeding in this court, including plaintiffs' supplemental pleadings shows that the action of the Interstate Commission was based on ample, relevant and controlling testimony; and that the Cummer scale of rates has been determined to be unjust, unreasonable and confiscatory.

3

This intervenor respectfully prays that the motion to file said supplemental bill be denied, and if the same be allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932, as amended July 28, 1932, be allowed to go into effect on February 25, 1933, as ordered by the Interstate Commission.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fol. 947] [File endorsement omitted]

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[fol. 948] IN UNITED STATES DISTRICT COURT

No. 695

[Title omitted]

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENER, TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor in the above stated cause, and without waiving its motion that the court deny the motion of F. S. Buffum Company, Inc. to file said supplemental bill and its motion to dismiss said supplemental bill if the same should be filed, answers the same and for answer says:

1

This intervenor does not deem it necessary to answer the various allegations of said supplemental bill in detail. Intervenor states that the findings of the Interstate Commerce Commission in its report of August 2, 1928, and in its report on the reopened proceedings of July 5, 1932, and in its report and order on the second reopened hearing, of January 9, 1933, in this proceeding, known as its Docket No. 18364, are all based on ample and controlling evidence, much of which is wholly uncontradicted.

[fol. 949] 2

The findings of the Interstate Commission in said hearings represent the legislative action of the Commission on facts submitted to it after due notice to all parties concerned and in which all of the parties were permitted to offer evidence, to file briefs and to make arguments. All of the matters were considered with painstaking care over a long period of time. The Interstate Commission's findings on those facts are conclusive.

The Interstate Commission in its first report in this cause of August 2, 1928 established not only certain intrastate rates on logs for application in Florida, but also interstate rates for the transportation of the same kind of logs between points in Florida and Georgia. Those intrastate rates have since been reaffirmed by the Interstate Commission, and there has been no contest over the interstate rates.

This intervenor avers that there is, in its judgment, no reason why the intrastate rates involved in this proceeding on logs over six feet in length, in Florida, should differ from interstate rates on the same kind of logs moving from points in Florida to points in Georgia; and that as hereinbefore stated, the said interstate rates have not been contested.

[fol. 950] 3

Intervenor represents that this situation has been an unsettled one for about eight years now, and caused intervenor to suspend on the 25th day of May, 1925, a schedule of intrastate rates in Georgia which it had issued on April 15, 1925. That schedule of rates was comparable to and

almost in exact conformity with the interstate rates put into effect by the Interstate Commission in this proceeding, applicable to the transportation of certain kinds of logs between points in Florida and points in Georgia.

4

This intervenor prays that the injunction prayed for in said supplemental bill be denied and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932 be allowed to become effective February 25, 1933.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

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[fols. 951 & 952] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 690

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND TUCKER SAVAGE, as and Constituting FLORIDA RAILROAD COMMISSION, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 691

WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 695

F. S. Buffum Company, Inc., Complainant,

vs.

United States of America and Interstate Commerce Commission, Respondents

Order Consolidating Causes—Filed Feb. 24, 1933

It appearing that the foregoing bills attack the same orders of the Interstate Commerce Commission and involve the same subject matter and depend upon the same evidence, all parties consenting, it is ordered that they be consolidated into one bill under the style first stated above, and that the case hereafter proceed as a single cause.

This 24th day of February, 1933.

Samuel H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

[File endorsement omitted.]

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[fol. 953] [File endorsement omitted]

In United States District Court

In Equity. Nos. 690, 691 and 695

[Title omitted]

Consolidated Petitions for Injunction

Stipulation as to Record—Filed July 26, 1933

(A). Whereas, the complainants by and with the consent of all parties, did file in evidence in this Court a printed transcript of the record in the case of State of Florida, et al., vs. United States of America, et al., reported in 282 U. S., at page 194, instead of a certified copy of the record in the proceedings had before the Interstate Commerce Commission in its Docket No. 18364, entitled, "Georgia Public Service Commission versus Atlantic Coast

Line Railroad Company", prior to said decision of the Supreme Court of the United States, said printed transcript containing a copy of the record (including the testimony and evidence in said proceedings before said Interstate Commerce Commission in said Docket 18364) prior to said decision of said Supreme Court; and,

[fol. 954] (B). Whereas, the complainants did offer in evidence before the District Court in the above entitled consolidated causes a certified full copy of the transcript of all testimony and evidence before said Interstate Commerce Commission in all of the re-opened proceedings in its said Docket 18364, being all testimony and evidence in said Docket 18364 not comprehended in said printed transcript of record described in Paragraph (A) above; and,

(C). Whereas, the testimony comprehended in said re-opened proceedings described in Paragraph (B) above has been reduced to narrative form, pursuant to Equity Rule 75; and

(D). Whereas, it is in the interest of economy that the original record of the District Court in the above entitled consolidated causes instead of a transcript thereof be transmitted to the Supreme Court of the United States on this appeal.

Now, therefore, it is stipulated and agreed by and between the parties as follows:

1. That the printed transcript of the record in the case of State of Florida, et al., versus United States of America, et al., and companion cases, numbers 16, 17 and 18, October Term, 1930, in said Supreme Court, the opinion in which is reported in 282 U. S. 194, et seq., comprising the proceedings before said Interstate Commerce Commission in its said Docket 18364 prior to the time of said decision, and now on file in this Court, be transmitted to the Supreme Court of the United States instead of a transcript thereof and instead of a transcript of said proceedings before said Interstate Commerce Commission prior to said decision of said Supreme Court.

[fol. 955] 2. That the within and attached volume of condensed and narrative statement of testimony constitutes a true and correct transcript in condensed and narrative

statement form of all the testimony before said Interstate Commerce Commission in its said Docket 18364, in said re-opened proceedings, subsequent to said decision of said Supreme Court, and contained in said certified full copy thereof so offered and received in evidence as aforesaid and now on file with the Clerk of the District Court. That the Clerk of the above entitled District Court shall transmit to the Supreme Court of the United States, the within and attached volume of condensed and narrative statement of such testimony in lieu of the certified full copy of such testimony or a transcript thereof.

3. That the above entitled District Court may direct the original record (including all pleadings, evidence and exhibits and other proceedings) to be transmitted to the Supreme Court of the United States on this appeal, except that the printed transcript of record in the State of Florida, et al., vs. United States of America, et al., described in Paragraph 1 above, shall be transmitted with and as a part of said record as provided in Paragraph 1 above and except that the attached volume of condensed and narrative statement of such testimony shall be transmitted to said Supreme Court of the United States as a part of said record, in accordance with Paragraph 2 above, instead of the certified full copy of such testimony.

This July 26th, A. D. 1933.

Cary D. Landis, Attorney General of the State of Florida. Elmer B. Collins, Special Assistant Attorney General of the United States. T. T. Turnbull, Special Counsel, Florida Railroad Commis- [fols. 956 & 957] sion. J. Stanley Payne, of Counsel for Interstate Commerce Commission. J. V. Norman, R. H. Hill, August G. Gutheim, H. P. Adair, C. G. Ashby, of Counsel for Wilson Cypress Company and Wilson Lumber Company of Florida. W. E. Kay, Carl H. Davis, F. B. Greu, Robert C. Alston, Alston, Alston, Foster & Moise, of Counsel for Atlantic Coast Line Railroad Company, Intervener. Julian E. Fant, F. C. Hillyer, of Counsel for F. S. Buffum Lumber Company. J. J. E. Anderson, of Counsel for Georgia Public Service Commission, Intervener.

[fol. 958] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 690, 691 and 695

STATE OF FLORIDA ET AL., Complainants;

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Atlantic Coast Line Railroad Company, Intervenor, Respondents

Consolidated Petitions for Injunction

**Findings of Fact and Conclusions of Law**—Filed Feb. 24, 1933

Three bills were filed against the United States and Interstate Commerce Commission, one by the State of Florida and the Florida Railroad Commission, another by Wilson Cypress Company and Wilson Lumber Company, and the third by F. S. Buffum & Co., Inc. Each upon similar allegations seeks to set aside and enjoin an order of the Interstate Commerce Commission made July 5, 1932, and amended July 28, 1932, whereby rates were prescribed for intrastate carload shipments in Florida of logs of certain classes conforming to rates established as reasonable for like shipments in interstate commerce between Florida and Georgia. The Atlantic Coast Line R. R. Co., the carrier whose rates were involved, intervened. After the grant of an order suspending the operation of the rates the bills were by consent consolidated and heard before a court of three judges on the pleadings and on the evidence submitted.

FINDINGS OF FACT

The attacked order of the Commission is its final judg- [fol. 959] ment on a proceeding instituted in 1926 by the Georgia Public Service Commission to which the complainant and intervenor in the present bills became parties. The then existing interstate rates on logs between Florida and Georgia were complained of, and the Florida intra-

state rates referred to as the Cummer Scale were attacked as causing undue prejudice to persons and places in Georgia in their commerce with Florida, and unjust discrimination against interstate commerce under § 13 of the Interstate Commerce Act. After lengthy hearings, on Aug. 2nd, 1928, reasonable interstate rates were fixed, and upon a general finding that the intrastate rates in question caused discrimination against interstate commerce an intrastate rate was prescribed to conform to the new interstate rates. 146 I. C. C. 717. On attack in this court against that part of the order fixing the intrastate rate it was upheld as justified for the removal of discrimination against persons and places in Georgia by confining its application to north Florida. 30 Fed. (2d) 116. The order was, however, clarified by the Commission so as to require its application to the entire State, and upon further attack it was upheld as proper to remove a discrimination against the general interstate commerce of the carrier in that the State rates were so low as to be unremunerative and to burden the revenues of the carrier. 31 Fed. (2d) 580. On appeal the Supreme Court declined to consider the evidence but reversed the judgment because there were not distinct findings by the Commission of the facts going to show such discrimination by a burden on revenues, the Court holding that the general finding that there existed a discrimination against interstate commerce in the language of § 13(4) of the Act was insufficient to authorize the Commission to [fol. 960] exercise its powers under that section; but it was suggested that such findings might yet be made upon proper evidence. 282 U. S. 194. This court accordingly entered its decree setting aside and annulling the portion of the order complained of. Thereupon the Georgia Public Service Commission and the Atlantic Coast Line R. R. Company on due notice to all parties, including the present complainants, moved the Interstate Commerce Commission to reopen the case before it, which over objection was done, and much new evidence was added to that previously taken. A motion was made by the present complainants at the beginning of the hearing to dismiss the proceedings as respects any issue of burden on the revenues of the carrier, and to exclude all evidence directed to that contention. The motions were overruled by the examiner, and again by the

full Commission, which after argument made an elaborate and lengthy report of its findings, put aside the question of undue prejudice by the State rates to persons and places in Georgia as unnecessary to be decided, but held the rates to be burdensome on the interstate carrier's revenues and thus a discrimination against interstate commerce, which it removed by again prescribing under § 13(4) of the Act future State rates to conform to the interstate rates which it had established as reasonable. 186 I. C. C. 157.

We find the conclusions of fact in the Commission's report to be well supported by the evidence, and such as we would ourselves make therefrom. Referring to that report for details we summarize the ultimate facts most material to the present issues. The State rates known as the Cummer Scale were voluntarily established in substance in 1903 and 1904 by Jacksonville & Southwestern R. R. Co., when railroad and timber to be transported were [fol. 961] owned by the same interests. The rates were inherited by the Atlantic Coast Line R. R. Co., on purchasing the railroad involved, and were by it applied as carload rates over all its lines in Florida in 1914. The Florida Railroad Commission at the time asserted that it did not approve the rates though perforce it allowed them, considering them too low and even confiscatory if involuntarily enforced. They apply on no other railroad in Florida. In 1928 and in 1932 comparisons of these rates with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic in the same logs in substantially the same territory. On the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Coast Line system, exact figures for the particular traffic in Florida not being available. But it appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in the log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the maintenance of the carrier as an efficient instrumentality of commerce, but

a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Com- [fol. 962] mission were enforced, the log traffic under them was 18,602 cars and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer Scale had been applied it would have been $281,225.75. Although the traffic fell off greatly during this period it is found to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the decision of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer Scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier as an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer Scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%. On these findings the general finding was made that the Cummer rates are and in future will be unjustly discriminatory against interstate commerce, and that such unjust discrimination can and should be removed by rates not less than the scale prescribed for interstate commerce. Pending this litigation in October, 1932, the Commission reopened its order and took further evidence which showed that many voluntarily reduced rates had been established since the order by other carriers on low-grade traffic in raw materials comparable to the log rates in dispute, in the western part of [fol. 963] the southern territory and in southwestern territory. It found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and generally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met

with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5th, 1932.

CONCLUSIONS OF LAW

We are of opinion that the particular findings are sufficient to support the general finding of unjust discrimination by the State rates against interstate commerce by undue burden on the interstate carrier's revenues, and to [fol. 964] justify an order removing the discrimination by establishing the new rate prescribed.

The contention is vigorously renewed that the proceeding before the Commission never was one in which a burden by the State rates on the revenues of the carrier was made an issue, so that the Commission could properly so find and on that ground prescribe a State rate under § 13(4) of the Act. We adhere to the views expressed in our former decisions, 30 Fed. (2d) 116: 31 Fed. (2d) 580. It is true that the Georgia Public Service Commission in its original complaint did not ask that the Florida State rates be raised, and it rather preferred that interstate rates should be lowered, but the complainant directly challenged the State rates, alleged that they caused a discrimination against interstate commerce within § 13 of the Act, and prayed for its removal. The State of Florida was duly notified as required by that section, and on full hearing discrimination was found to exist and sought to be removed by prescribing a new State rate by virtue of § 13(4). This court held that discrimination by revenue burden was within the case before the Commission, and upheld the order on that ground only. The Supreme Court, 282 U. S. at p. 209, so far from disagreeing said: "As the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company the rates of which were in question and other parties in interest, both shippers and carriers, were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence, rather than to mere matters of pleading and procedure. In making its [fol. 965] order the Commission could exercise all the authority conferred by the Interstate Commerce Act for

the purpose of removing such unjust discrimination as it found to exist. If the Commission had made adequate findings, supported by evidence, upon the point under consideration we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or because of the generality of the allegations of the complaint." Much more forcibly do these words apply, now that the parties have had another full hearing upon this precise issue, with full knowledge that courts and Commission regarded that issue not only as present but as controlling. The Commission having in due form found that the State rates do cause an unjust discrimination against interstate commerce by the very words of § 13(4): "It shall prescribe the rate * * * thereafter to be charged * * * in such manner as in its judgment will remove such discrimination." It is the judgment of the Commission and not the wish or the prayers of the Georgia Stata Commission that is to determine what shall be done about the discriminatory State rate.

Early in the reopened proceedings before the Commission the complainants made a written demand on Atlantic Coast Line R. R. Company that it produce a statement, supported by individual car-record movements, showing certain details as to cars of logs moving on its lines between points in Florida and Georgia for each of the years 1926, 1927, 1928, 1929 and 1930, a like statement concerning cars moving within the State of Florida for each of those years, and a statement showing the gross earnings from both interstate and intrastate shipments of such logs for each of those years. The Railroad Company in answer stated [fol. 966] that it expected to furnish certain appropriate data about its log traffic, but could not get up the statements requested for lack of time and because its records did not show the distinctions in log traffic required. The Railroad Company did produce details of its log traffic since 1928, but not before. The Commission refused to compel further compliance. It will be noted that no specified books or papers were asked to be produced, nor any specified witness called on to tell what he might know. We are aware of no rule of law or practice which would require a litigant laboriously to compile information for his adversary, even if it were in his power to do so. Certainly it

would lie in the discretion of the tribunal to decline to compel it. We find in such refusal no cause to upset an order founded on evidence which was duly produced before that tribunal.

But it is said that the information demanded was essential to a finding of unjust discrimination, the revenue before 1929 under the State rates being one of the things mentioned by the Supreme Court as necessary to be established. We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, [fol. 967] and to require its correction.

The ascertainment of the general fact of loss is said to be unlawful because the witnesses and the Commission dealt in part with the average costs of similar service over the Coast Line System and the general cost of hauling freight in the division which substantially embraces the State of Florida, rather than the actual cost of hauling logs in Florida. But it was shown that the latter information could not be gotten; that the cost of service in Florida for reasons given was greater than elsewhere in the System, so that average costs for the System really showed a less cost than the Florida costs if they could have been separately ascertained. The difference in cost between hauling logs and other carload freight was also given attention. Not infrequently the best evidence obtainable has to be used as a basis for inferences, and conclusions of fact made therefrom with due allowance or possible inaccuracies are not invalidated because the best evidence logically possible was not at hand.

Appendix E of the Report entitled "Estimated Costs of Transporting Logs in Florida for the Average Distance of 81.36 miles based on A. C. L. Average Costs per Unit for Calendar Year 1929 Applied to the Average Units In-

volved in Hauling Logs in that State.", is attacked as being evidence considered by the Commission which was not introduced in the proceeding so that opportunity should be given to the parties to meet it, contrary to Interstate Commerce Commission vs. Louisville & Nashville R. R., 227 U. S. 88. We do not understand the Appendix to be evidence considered by the Commission. It is rather the Commission's conclusion as to the cost of hauling logs in Florida [fol. 968] for the distance shown to be the average under the Cummer Scale, based on the evidence which had been produced to it as tending to show such cost. So far from vitiating the order made it rather tends to show the care and discrimination with which the inexact evidence of cost was examined and considered.

A contention strongly urged is that the direct prescription by the Interstate Commerce Commission of an intrastate rate is prima facie an unconstitutional invasion of the province of the State, so that the burden is on the defendants here to justify it before the court, and that in order to justify it the facts of justification, to-wit, those showing the State rate to be an unjust discrimination against interstate commerce, must clearly appear to this court, the findings of the Commission not being conclusive, nor in themselves weighty on the very point of the Commission's jurisdiction. It is not doubted that the power of the Commission to make an order is a judicial question, and that the Court may examine it independently. When, however, the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is certainly sufficient to put the burden upon those who deny it. While at one time all findings of the Commission were declared by the statute to be only prima facie evidence of their correctness, that language has now been retained only with reference to money awards and to valuations of property by the Commission, and it is well established that under the enlarged and positive powers with which the Commission is now vested its findings of fact within the scope of its powers will not be reviewed by the courts if supported by evidence. [fol. 969] Merchants Warehouse Co. vs. United States, 283 U. S. 501. Where the matter examined relates to its power to act at all the decisions are perhaps not so explicit, but we

may refer to the following expressions of the court as bearing directly upon it: In I. C. C. vs. Northern Pacific R. R. Co., 216 U. S. 538, 544, it was said: "We are of the opinion that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by the courts. How far the courts should go in that inquiry we need not now decide. No doubt in complex and delicate cases great weight should be attached to the judgment of the Commission." In Interstate Commerce Commission vs. Union Pacific R. R. Co., 222 U. S. 541, 547, in discussing fundamental questions of the Constitutional and statutory power of the Commission it was said: "In determining these mixed questions of law and fact the court confines itself to the ultimate question whether the Commission acted within its power * * * Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order." In interstate Commerce Commission vs. L. & N. R. R. Co., 227 U. S. 88, the court held that the power of the Commission to alter rates depended upon the fact of their unreasonableness, but that the Commission having found on evidence that they were excessive, its order was not to be disturbed. In United States vs. L. & N. R. R. Co., 235 U. S. 314, 320, the language held is: "It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar charac- [fol. 970] ter would be most fitted to primarily decide whether, from facts disputed or undisputed, in a given case preference or discrimination existed, and the amendments by which it came to pass that the findings of the Commission were made not merely prima facie but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise since if the view of the statute upheld below be sustained the Commission would

become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action." We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists.

In the evidence of lower voluntary rates recently made by other carriers in other territory we find nothing to require a different conclusion. A situation may thereby arise requiring inquiry as to other discriminations, but it throws little light on the revenue problem of the Atlantic Coast Line Railroad Company as an interstate carrier. If log traffic done in Florida on the Cummer Scale is at an out-of-pocket loss, the less of it done the better. The destruction of it would help by stopping a loss. If but a little business be done on remunerative rates so much profit would be substituted. The Commission has given full and expert [fols. 971 & 971a] attention to the situation, and has found that adherence to the level of log rates it has previously established as reasonable in interstate commerce and has applied as a minimum in intrastate commerce in Florida should be continued. We find no such plain case to the contrary as to warrant court interference. The findings and the evidence show the Cummer Scale of rates to constitute such a substantial revenue burden on the interstate carrier and on interstate commerce as to cause a discrimination against the latter and to give the Commission power to remove it under Interstate Commerce Act, § 13(4). The action to be taken in removing it is left by the section to the judgment of the Commission. It having power in this case to prescribe a proper intrastate rate, its judgment as to the level of the rate to be established in order to accomplish the desired revenue result ought not to be overridden when sustained by evidence and violative of no law. We uphold the orders of the Commission.

Samuel H. Sibley, Circuit Judge, E. Marvin Underwood, District Judge, Louie W. Strum, District Judge.

[fols. 972-975] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 690, 691 and 695

STATE OF FLORIDA ET AL., Complainants,

Versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Atlantic Coast Line Railroad Company, Intervenor, Respondents

Consolidated Petitions for Injunction

FINAL DECREE—Filed Feb. 24, 1933

This consolidated cause came on for hearing for a final decree on Feb. 24, 1933, and was submitted upon the pleadings and evidence introduced then and theretofore to a special court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable E. Marvin Underwood, District Judge, and Honorable Louie W. Strum, District Judge.

Pursuant to the findings of fact and conclusions of law filed herewith, it is now considered, ordered and decreed that the orders of the Interstate Commerce Commission made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made Jan. 9, 1933, as set forth in the pleading, be and are hereby sustained, and the prayer to annul and set aside and enjoin the same is refused, and that the respondents recover of the complainants their costs in this behalf to be taxed by the Clerk.

This February 24, 1933.

Samuel H. Sibley, Circuit Judge, E. Marvin Underwood, District Judge, Louie W. Strum, District Judge.

[File endorsement omitted.]

[fol. 976] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant

Narrative statement of testimony

Jacksonville, Florida,
June 10, 1931, 10 a. m.

Before E. J. Hoy, Examiner

Met pursuant to notice.

APPEARANCES OF COUNSEL:

E. M. Price, for Georgia Public Service Commission.

Robert C. Alston, and Frank W. Gwathmey, for Atlantic Coast Line Railroad Company.

T. T. Turnbull, Counsel, E. S. Matthews, Chairman, Fred Pettijohn, Accountant, J. H. Tench, Rate Expert, L. D. Ragin, Commissioner, for Florida Railroad Commission (Tes. p. 937).

H. P. Adair, C. G. Ashby, C. E. Cotterill, August G. Gutheim, for intervening Florida Log shippers.

J. V. Norman, for Wilson Lumber Company of Florida, intervenor.

E. C. Green, for Jacksonville Traffic Bureau, Jacksonville Chamber of Commerce and Municipality of Jacksonville.

Thomas D. Guthrie and Russell W. Bennett, for Standard Container Manufacturers' Association, Nocatee Crate Company, Southern Veneer Company, Mutual Crate Company.

T. M. True, for Southern Cypress Manufacturers' Association (Tes. p. 938).

E. C. Mitchell for Cummer Cypress Company.

[fol. 977] Examiner Hoy: The Interstate Commerce Commission has set for further hearing at this time and place Docket 18364, Georgia Public Service Commission versus Atlantic Coast Line Railroad Company (Tes. p. 939).

E. M. PRICE, recalled as a witness, having been previously sworn, testified as follows:

Mr. Adair: On behalf of the intervening lumber companies we ask leave to either ourselves inquire of the Georgia Public Service Commission and its counsel or ask that the Examiner will inquire of them whether they have abandoned the position formerly taken by them at the former hearings in this cause, to wit, that the thing here sought by the Georgia Commission was to establish a reasonable rate for the transportation of logs interstate from points in Florida to points (Tes. p. 942) in Georgia and that this was not a revenue case, and that there was no reason in this case for the increase of any rates. Upon the former occasion the Georgia Public Service Commission expressly disclaimed any attempt to prove a revenue burden upon the revenues of the carrier under Section 13. We desire to know now at the beginning of this hearing whether that is still the position of the Georgia Commission.

Mr. Norman: Mr. Examiner, I would like to say in that connection that if that be still the reason that we develop that at this time, because if that is the present position of the complainant, the Georgia Public Service Commission, it is our position that the defendant, Atlantic Coast Line Railroad may not in this proceeding bring in issue under the 13th section of the Act the question of a revenue burden because the Act provides that where they seek to do that, they must do so by application under the 13th section, and the Commission may order an investigation.

Mr. Turnbull: Mr. Examiner, on behalf of the Florida [fol. 978] Railroad Commission I would like to make a statement or rather read a statement that Mr. Matthews, Chairman of that Commission would make if he were here this morning, and desire to make and enter in the record:

"I am chairman of the Florida Railroad Commission. The Interstate Commerce Commission has notified (Tes. p. 943) our Commission that these proceedings were to be held here today and that further testimony would be taken.

"At the very commencement of this hearing I desire to state the position of the Florida Railroad Commission with respect to it. Our position is that the Interstate Commerce Commission has no jurisdiction in this proceeding to prescribe intrastate rates on logs between points

in Florida. The Supreme Court of the United States, in its opinion in this case, declared that the authority to determine the reasonableness of these very intrastate rates lay with the Florida Railroad Commission and not with the Interstate Commerce Commission.

This intrastate log rate was voluntarily initiated more than fifteen years ago by the Atlantic Coast Line Railroad Company. When once established by the Railroad Company it became the lawful state rate, and the laws of Florida prohibit any change or increase in it without consent and approval of the Florida Railroad Commission, after due notice to the interested parties and a hearing upon it. During all the years it has been in effect, neither the Railroad Company nor other interested parties have ever complained to the Florida Commission about the level of that rate, though our doors all that time have been open to anyone dissatisfied with that rate. The result of these [fol. 979] proceedings before the Interstate Commerce Commission has been to injure and destroy intrastate commerce within the State of Florida, and to injure and destroy industries (Tes. p. 944) and whole communities without benefiting anyone in Georgia or in Florida. The laws of Florida provide the means by which an application may be made for any proper revision of this or any other rate, by the Atlantic Coast Line Railroad Company or by any other party at interest that may see fit to bring the matter in a proper way before the Florida Commission.

"Speaking for the Florida Commission, we consider that not only is the Interstate Commerce Commission without power to invade the domain of the State in this matter, but if it had the power to do so it should not exercise this power until the Railroad Company has applied to the State of Florida for such relief as it may deem itself entitled to have, as to the intrastate rates on logs between points in the state of Florida."

Mr. Alston: I did not gather from the statement which you have read on behalf of the Chairman Matthews as to whether the position of the Florida Railroad Commission is that the Cummer scale is reasonable or whether it is unreasonable. Would you mind saying.

Mr. Turnbull: I made no statement with reference to that. It is involved in this hearing and there is an application here to consider the intrastate rates. My recollec-

tion of a motion of the Atlantic Coast Line Railroad Company to reopen for a rehearing in this case, there was a prayer attached to the motion asking that lawful intrastate rates be fixed by (Tes. p. 945) the Interstate Commerce Commission, and it is our position that that is within the province of the Florida Railroad Commission and that until [fol. 980] some application has been made to the Florida Railroad Commission by the Atlantic Coast Line seeking a revision of this rate, that the Interstate Commerce Commission has no jurisdiction, especially Mr. Alston since the Supreme Court of the United States has found, the former examiner found, the Interstate Commerce Commission found, and the Supreme Court of the United States found that there was no interstate traffic involved, and that as there was none there could be no discrimination, therefore if there is no discrimination the Florida Railroad Commission has the right per se to fix these rates.

Mr. Altson: We do not admit the statements as to the result of the finding of the Examiner or the Commissioner or the Court, as stated by counsel, but counsel does not answer the question which is, does the Florida Commission claim that the present Cummer scale of rates known as the "Cummer scale" is a reasonable scale.

Mr. Cotterill: That is immaterial.

Exam. Hoy: I don't think it is necessary to go into that at this time. That is something probably that the evidence may show some light on a little later on. My ruling on your question is that we will proceed with the testimony of Mr. Price, and it is not necessary for him to state whether (Tes. p. 946) his position is changed or not. The examiner may want to ask him some questions himself later on, I do not know. But, I might add that his position in the case heretofore is shown by the record in this case, and he is going to offer some further testimony and I presume his position has not changed, until somebody develops it has changed either by his own testimony or by cross examination.

Mr. Norman: Then, Mr. Examiner, if his position has not changed, if that is admitted I wish to move to exclude

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[fol. 981] Exam. Hoy: Let us find out first—let us proceed with the testimony and find out.

Mr. Norman: I thought you said it was admitted. If it is admitted.

Exam. Hoy: Go ahead, Mr. Price.

Direct examination:

If I understand correctly the previous record has been reopened and will be considered in this rehearing.

In the original hearing I submitted by exhibit No. 1 that shows discrimination against shippers at various points in Georgia. That condition has changed to the extent that on the order of the Commission in this case the interstate rates from Florida to Georgia that were used in my exhibit have been slightly reduced. The exhibit shows the interstate rates that were in effect at the time of the hearing, and I want to (Tes. p. 947) show now the extent to which that has been changed by referring to Bainbridge, Georgia, which is one of the points referred to in my exhibit No. 1.

If the manufacturer at Bainbridge purchases logs at Springer, Florida, a distance of 51 miles under the present rate fixed by the Commission in this case he would pay 4½ per 100, and for 150,000 pounds of logs, which is equivalent to one car of lumber outbound he would pay $67.50. If Bainbridge ships to Boston, Massachusetts, he pays a rate of 45 cents a 100 on his lumber, and for a car of 50,000 pounds, which would be the result of 150,000 pounds of logs, his lumber cost would be $225.00, or a total cost at Bainbridge for the logs inbound and the lumber outbound of $292.50. The distance from Springer to Bainbridge is 51 miles.

[fol. 982] The distance from Lake Butler to Jacksonville is 53 miles or approximately the same distance from Springer to Bainbridge. The present intrastate rate from Lake Butler to Jacksonville is 2.1 per 100 pounds, for 150,000 pounds of logs the cost would be $31.50. The rate on lumber from Jacksonville to Boston is 45 cents, or the same as the rate from Bainbridge to Boston. The lumber cost being $225.00 or the total cost of the logs inbound and the lumber outbound of $256.50; that Bainbridge is at a disadvantage as compared with Jacksonville of $36.00 per car, both drawing their logs from approximately the same distance, both having the same outbound rate. (Tes. p. 948)

Mr. Norman: Just a minute. Mr. Examiner, I wish to enter an objection to any evidence as to lumber rates because they are not in issue in this proceeding and move to exclude the evidence that has been offered with reference thereto.

Mr. Adair: Mr. Examiner, permit me to enter an objection to this line of testimony not only because lumber rates are not here in issue but also it has been made to appear that no logs are available at Springer, Florida, for shipment either to Bainbridge, Georgia, or to any Florida point, and it has not been shown that there is any interstate commerce moving from Springer, Florida to any Georgia point in logs.

Exam. Hoy: That is something I think to be developed by you. There is a rate apparently, and the witness is testifying as to the rates on logs and the rate on lumber. He is not testifying that there are movements under the rates.

Mr. Adair: I wanted to make the seasonable objection before.

[fol. 983] Exam. Hoy: If there are no movements I presume you are going to show that.

Mr. Norman: We think it is incumbent upon them to show that there is a movement.

Exam. Hoy: It will go to the weight of their evidence, but the testimony is perfectly proper I think to show the rates on lumber from various points to compare the rates on logs shipped inbound, and to show discrimination, to also (Tes. p. 949) show the rates on lumber in connection with them. It is true the rates on lumber are not in issue.

Mr. Norman: Will you note an exception.

Exam. Hoy: The record will note an exception.

Witness Price (continuing:) These points I have mentioned are already in the record and are shown in my exhibit No. 1. At Thomasville, Georgia. Should Thomasville, Georgia, and Jacksonville, Florida, buy logs at the same place, Baker's Mill, Florida, the distance from Baker's Mill, Florida to Thomasville is 99 miles; the present interstate rate on logs from Baker's Mill to Thomasville is 6 cents, or for 150,000 pounds, $90.00. The lumber rate from Thomasville to Boston is 45 cents, and for 50,000 pound car, $225.00, making a through charge on the logs inbound and the lumber outbound $315.00. The distance from Bak-

er's Mill to Jacksonville is 138 miles or 39 miles greater than it is from Baker's Mill to Thomasville. The intrastate rate from Baker's Mill to Jacksonville is 3.4 cents per 100 pounds. For 150,000 pounds of logs $51.00, and the rate on lumber from Jacksonville to Boston is 45 cents, or the same as it is from Thomasville, and the lumber charge would be the same (Tes. p. 959) or $225.00, making a total [fol. 984] charge on the logs inbound and the lumber outbound of $276.00, or a discrimination against Thomasville of $39.00 per car.

At Quitman, Georgia. Should Quitman and Jacksonville both purchase logs at Suwannee, Florida, the distance from Suwannee to Quitman being 85 miles, the present interstate rate on logs is 5.5 per 100 pounds and for 150,000 pounds would be $82.50. The rate on lumber from Quitman to Boston is 45 cents and the lumber charge for 50,000 pounds would be $225.00 or a total charge for the logs inbound and the lumber outbound of $307.50. The distance from Suwannee to Jacksonville is 135 miles or 50 miles greater than from Suwannee to Quitman. The rate on logs from Suwannee to Jacksonville is 3.4 cents per 100 pounds or for 150,000 pounds $51.00. The rate on lumber from Jacksonville to Boston is 45 cents per 100, or the same as it is from Quitman; the charge for 50,000 pounds being $225.00, making a total charge of the logs inbound to Jacksonville and the lumber outbound of $276.00 or a discrimination against Quitman of $31.50, notwithstanding Quitman is 50 miles nearer the point of the shipment of the logs than is Jacksonville.

Should Valdosta and Perry, Florida, purchase logs at the same point, Mandeville, Florida, the distance from Mandeville, Florida to Valdosta being 144 miles, the interstate rate on logs being 7.5 per 100 pounds or a charge for 150,000 pounds (Tes. p. 951) of $112.50. The rate on lumber from Valdosta to Boston is 45 cents per 100 pounds and the charge for 50,000 pounds would be $225.00, making the total charge on the logs inbound and the lumber outbound of $337.50. The distance from Mandeville, Florida to Perry, Florida is 148 miles; the rate on logs being 3.4 cents per 100 pounds and the charge for 150,000 pounds of [fol. 985] logs being $51.00. The rate on lumber from

Perry, Florida to Boston is 46 cents per 100 pounds making the lumber charge for 50,000 pounds $230.00, or the total charge on the inbound movement of logs and the outbound movement of lumber of $281.00, or a discrimination against Valdosta of $56.50 per car.

It is that changed condition so far as the rate situation is concerned that we wanted to bring to the attention of the Commission to show that the change is very slight and that the discriminations still exist against manufacturers of lumber at these Georgia points particularly those that are shown in my exhibit No. 1. (Tes. p. 952)

Exam. Hoy: Are there any intervenors supporting the complainant at all here:

Mr. Cotterill: Yes, there are Georgia intervenors.

Mr. Adair: They are not in support of the complaint.

Cross-examination.

By Mr. Alston:

Witness Price (continuing:) My exhibit No. 46 in the original case, which appears at page 386, is now correct, modified by the change in the interstate rate to which I have just referred. (Tes. p. 953) The new interstate rates are published in Agent Glenn's Southern Lumber Tariff I. C. C. A-659. There are changes in the interstate rates, to which I have referred, which were worked up by order of the Commission in this case. Looking at exhibit No. 36, of witness Reeves, page 361 of the record in the Supreme Court, which is a list of saw mills and planing mills operating on the Atlantic Coast Line in Georgia; and Exhibit 37, which is a continuation of that exhibit with more detail as to the output and so forth of those mills, there has been a change in conditions in that I understand that the Jackson Brothers Mill was destroyed by fire. They are now [fol. 986] operating what they call a small band mill. So far as I know the conditions of these mills (Tes. p. 954) otherwise in this territory as shown in those exhibits are the same.

By Mr. Alston:

Q. As to the difference in the cost of putting lumber in certain northeastern cities in this country, beginning about Baltimore and running up to Portland, Maine, as compared

with lumber manufactured by one of these mills mentioned in one of these exhibits, and when the lumber is manufactured in Florida, the logs moving over comparable distances, please say whether or not in your opinion that added cost to the lumber at the market in the territory, beginning say at Baltimore and running up to Portland, Maine, is sufficient to exclude the Georgia manufacturer from that territory?

Mr. Adair: It seems to me in the first place, your Honor, that the witness has not been qualified to testify as an expert with respect to the lumber business. In the second place, nobody said anything about Portland, Maine, so far as I have heard yet in this proceeding.

Exam. Hoy: I take it you are referring to the previous record, when you said the rates on lumber from Baltimore to Portland. Of course here he has only given the rates on lumber to Boston. (Tes. p. 955)

Mr. Adair: I don't think it has been established that any of these Georgia shippers sell in those markets.

Exam. Hoy: Certainly Mr. Price has not been qualified yet as an expert in the marketing of lumber so that he could testify as to whether any rate would keep a manufacturer out of a market or in it.

Witness Price (continuing:) As to whether the rates from these southeastern destinations to those northeastern destinations are rather blanket rates covering the entire [fol. 987] northeastern territory, it is true that the rates going up to North Atlantic coast, beginning at Baltimore are built up—the rate at Boston being higher than the rate at Baltimore, and the rate from the Georgia shipping point and the Florida shipping point would be the same, but would reflect whatever differential there might be at Baltimore, therefore any disadvantage that the Georgia shipper would have at Boston would be the same as at Jersey City, Baltimore, Philadelphia, and so on up the coast. (Tes. p. 956). In other words the purpose of my exhibit here is to show that this discrimination is in the cost of the logs. I have simply traced it through to Boston, and if I recall correctly some of the Georgia shippers testified as to reaching these markets in the previous case.

I have been rate expert for the Georgia Public Service Commission since October 1, 1919, and prior to that I was

in the railroad service subsequent to 1889 in various capacities from messenger boy on through, and the greater part of the time has been in the traffic department. From my experience I have become familiar in a general way with the things which effect the making of rates, and the movement of traffic, and the effect of the rates on the movement of traffic.

By Mr. Alston:

Q. From your knowledge gained in the manner you have described I suppose you found that the disparity against the Georgia manufacturer and in favor of the Florida manufacturer in the cost of putting logs, lumber, into Boston and northeastern (Tes. p. 957) points of the United States was in the extent and in the manner which you have described, and then suppose you found that the Georgia manufacturer was not in those northeastern markets that he [fol. 988] did not market, he did not sell in those markets at all, and you found therefore that——

Mr. Adair: We object, your Honor. He is attempting to do by indirection, which your Honor said he could not do directly, and that is to say for him to testify as an expert when he plainly is not qualified.

Exam. Hoy: He has qualified him as an expert in rates and based on that knowledge he has asked him what he would attribute a failure not to sell.

Mr. Cotterill: There is no proof of failure to first, your Honor.

Exam. Hoy: But, if there was a failure, if the Georgia men could not get into the market, upon what he would attribute his failure to get into the market.

Mr. Cotterill: That would be material.

Exam. Hoy: It is a hypothetical question but he can answer it.

Mr. Adair: He has not qualified himself as knowing anything about the marketing of lumber—of the manufacture or marketing of lumber.

Exam. Hoy: He has qualified himself as a rate expert and the question is whether based on his rate knowledge he can (Tes. p. 958) attribute the failure to get into a market to any particular cause. Is that right?

Mr. Alston: Yes.

Exam. Hoy: He may answer the question.

Witness Price (continuing:) I would first investigate, Mr. Alston, if I was handling an adjustment of that kind with [fol. 989] a view of determining just what the cost was. I don't know just what position you want to place me in as the investigator, whether I will be representing the carrier or the shipper, or what not.

By Mr. Alston:

Q. Suppose you were representing a manufacturer?

A. If I was representing a manufacturer, and my company could not or was not selling lumber or any other commodity in a given territory but, my competitors were shipping into that same territory I would of course investigate to determine why my company could not get in there.

Q. And suppose you found that the cost—the combined freight cost of your logs and your lumber to points of destination as compared with your competitor represented the disparity against you which you have just testified, would you then consider that disparity as contributing to or causing the condition—your exclusion from that market?

Mr. Norman: I object.

Mr. Adair: Same objection, your Honor.

Exam. Hoy: I think I will sustain that. You are presupposing you are—he is a lumber dealer now (Tes. p: 959).

Mr. Alston: I am just following him along.

Mr. Adair: If you will permit me to say, not following but leading.

Q. Mr. Price, from your knowledge as a rate expert would you consider the disparity in the rate cost of getting the logs to the mill and the lumber to these northeastern points which exist against the Georgia manufacturer and in favor of the Florida manufacturer to which you have testified as being sufficient to exclude them from those markets.

Mr. Adair: Your Honor the same objection. Also I would [fol. 990] like to get this further objection into this thing.

Exam. Hoy: Just wait a minute. That is presupposing he is a manufacturer of lumber too, Mr. Alston. I think certainly that Mr. Price will probably testify from his knowledge as a rate expert that he would probably testify that if his competitor had a better rate than he had, it would make him suspicious, whether it was lumber or any other commodity.

Q. Mr. Price, in your own way please tell what in your opinion as a rate expert would be the effect of the disparity which you have described against the Georgia shipper in the markets to the northeast?

Mr. Adair: Same objection, your Honor. Your Honor, I would like also to interpose a further objection and this will go to all this line of questions. In all the tribunals with which I am familiar where there is a controversy made up from (Tes. p. 960) the issues where the complainant in a case is asserting one thing and the defendant has answered and has denied the thing asserted by the complainant, it is very strange to see the defendant attempting to prove by the complainant that the answer of the defendant is wrong and that the complainant and the defendant is right. I don't understand that.

Exam. Hoy: Well, we are here to hear this evidence, and we do not care about any more speeches on the record than we can have need for. Now the complainant is here on the stand he is subject to cross examination. Now, let the cross examination proceed. The last question I think was improper cross examination, or any other question that presupposes that Mr. Price is a manufacturer of lumber.

Witness Price (continuing:) I, as a representative of the [fol. 991] Commission have been representing the Georgia manufacturers in these proceedings. I have become acquainted with the status of their business and the needs of their business in reference to these Florida log rates and to their rates in reaching the territories of the country, the markets of the country, only to the extent that the winesses for the manufacturers themselves have testified. When these complaints come to the Georgia Commission I then proceed to investigate the rate situation to determine whether or not (Tes. p. 961) there was any foundation for the complaint, and found the conditions as is shown in my exhibit No. 1 and is shown this morning in my testimony, the change which has taken place subsequent to the Commission's order.

By Mr. Alston:

Q. Did you attribute it—from your examination then, what did you find was the effect on the Georgia shippers in the markets of this difference in rates?

Mr. Adair: Same objection, your Honor.

A. As to the ability to sell in the market I could not say about that Mr. Alston. The witness for the manufacturers testified as to that themselves.

By Mr. Alston:

Q. Now, when you investigated that condition, was that what you were referring to when you said that the evidence submitted at the rehearing——

Exam. Hoy: Just a second, I don't think you ought to put in this record reference to pages of the Supreme Court record because that is not a part of the record. Reference to the witness' testimony in the record in this case, and the page in our record if it is in there, if you have got that there.

Q. (continued) As said in your previous testimony when you wrote on July 16, 1925 in the quotation appearing in [fol. 992] the evidence of Mr. Perrin in the original record, about folio (Tes. p. 962) 605 as follows: "The evidence submitted at the rehearing reveals, what is in the opinion of the Commission as intolerable situation as regards the rates in Florida as compared with the interstate rates between Georgia and Florida and the effect on this situation the suspended rates authorized in the Commission's order."

A. I don't recall. Is that part of my testimony.

Q. That is part of your letter.

A. Before the complaint was brought by the Georgia Commission?

Q. It was on the rehearing?

A. Before the Interstate Commerce Commission?

Q. Yes, in '25.

Mr. Adair: I would like to have the question reread, I have lost the drift of it.

Exam. Hoy: Let us see this.

Mr. Adair: Top of page 604, your Honor.

Exam. Hoy: Just should have reference to his previous testimony without giving any page to Mr. Perrin's previous testimony in which he quoted Mr. Price. If Mr. Price will kindly identify it.

Witness Price (continuing:) As to whether this is a correct statement of my letter which Mr. Alston has just read,

I could not answer that definitely without seeing the letter. I don't like to testify concerning another (Tes. p. 963) man's exhibits or testimony. I do know that prior to the bringing of this complaint by the Georgia Public Service Commission, the Georgia Commission reopened for further hearing the matter of rates of Georgia intrastate traffic from complaints from the Georgia shippers, and at that hearing it was brought to the attention of the Georgia Com- [fol. 993] mission the existing Florida conditions, brought about by the Cummer scale of rates. Under the Georgia law creating the giving powers to the Georgia Public Service Commission whenever in the opinion the Georgia Commission any interstate rates are unreasonable, or discriminate against Georgia shippers it is the duty of the Georgia Commission to bring the matter to the attention of the carriers at fault and if proper adjustment is not made in the opinion of the Georgia Commission, then, the Georgia Commission is required to bring the matter to the attention of the Interstate Commerce Commission with a request that relief be granted. Now in this particular case I handled the correspondence for the Georgia Commission and did have some correspondence with the traffic officials of the Atlantic Coast Line Railroad. I found the condition which I have described and brought about by the Cummer scale as objectionable. That was the opinion of the Georgia Public Service Commission (Tes. p. 964).

Referring to Exhibit No. 1 page 2, as to whether or not there are any logs at Springer, Florida available for shipping to Bainbridge, Georgia or elsewhere, I testified on that point at the original hearing to the effect that I did not know whether or not there was any movement of logs from these various Florida points to Georgia points, but I really did not see how there could be any movement with the discrepancy in the Florida intrastate rates and the interstate rates. As to whether there are any logs shipped from Springer, Fla., or not personally I do not know. As to whether or not there are any logs shipped from Florida to Georgia or available for shipment from Florida to (Tes. p. 965) Georgia from any of those points that I specified in my exhibit No. 1 page 2, from my personal knowledge I do not know. I do know that the rates are published and [fol. 994] the carriers as a rule weed out all paper rates and do not carry rates except where there is a movement, or a prospective movement:

By Mr. Adair:

Q. But you do not know that there are any logs available?

Exam. Hoy: No, he does not.

Witnes Price (continuing:) I do not know of my own knowledge whether any movement of logs has taken place from Florida points of origin to Georgia destinations of logs of the tariff description here involved since February 8, 1929, which was the date that the order of the Interstate Commerce Commission went into effect. I don't know that there has been any movement at all.

By Mr. Norman:

Q. Mr. Price, Mr. Alston asked you with reference to a list of Georgia mills contained in your exhibits. I think you referred to it as complaining Georgia mills. You don't mean that the mills here listed are complaining (Tes. p. 966) about the Florida rates do you?

A. I did not understand that he mentioned the complaining Georgia mills. He mentioned the list of mills shown in that exhibit, which was not my exhibit.

Q. Now, Mr. Price, in your previous testimony you stated that this is not a revenue case. I wish to ask you if you are now as the complainant in this case undertaking to have the rates applicable within Florida for the movement of logs of the description here involved increased because they are a revenue burden on interstate commerce?

A. Mr. Norman, the Interstate Commerce Commission [fol. 995] is the body that would have to determine whether or not they are a burden on interstate commerce. The complaint of the Georgia Commission deals with discrimination.

Q. What kind of discrimination?

A. Well, we are complaining under Section 13 for one, and under Section 3.

Q. Well, are you complaining that the Florida intrastate log rates are unduly low and a burden on interstate commerce from the revenue standpoint, and asking the Interstate Commerce Commission for that reason to increase the Florida intrastate rate?

Mr. Gwathmey: If the Examiner please, I submit that the complaint filed by the Georgia Commission speaks for itself

and is the best evidence of what it shows; and in that connection (tes. p. 967). I refer you to paragraph II of the complaint itself.

Exam. Hoy: I think that that question is not necessary and not proper, Mr. Norman. The complaint alleges a violation of Section 13, which is what we just said it was, a revenue question.

Mr. Norman: I know but, if the Examiner please, the complainant has expressly disavowed in the first hearing any intention or desire to make this a revenue case. Now, I am asking him if that is still the basis of the complaint.

Exam. Hoy: As I understand it the complainant has never withdrawn his Section 13 allegation in this case; the Section 13 allegation is in there. The Section 13 allegation is passed on by the Commission, went to the Supreme Court and the Supreme Court passed on the Section 13 allegation. It certainly considered Section 13 and refused to uphold the order of the Commission.

Mr. Norman: Now, if the Examiner please, in all orderly [fol. 996] procedure, before any tribunal, it is fundamental in our law that the parties are entitled to know what the charges are and what the complainant is claiming.

Exam. Hoy: And the complaint says what the charges are, Mr. Norman, as I understand it, and one of the charges are a Section 13 violation.

Mr. Cotterill: But, at the former hearing when we were engaging in just such a discussion as this your Honor, counsel for the complainant who is not now present, and later the witness on four different occasions first in the beginning and at the end of the case, especially disavowed in terms any endeavor for purposes of such complaint to seek an increase in the intrastate rate.

Exam. Hoy: Apparently the Commission did not consider what was shown on the record as a withdrawal of the Section 13 allegation. They passed on the Section 13 feature and the Section 13 feature went to the Supreme Court, and the Supreme Court said the Commission was wrong in making a Section 13 finding on that record without having made their findings to support it but, the Supreme Court did not intimate in its decision as I have read it that there is not a Section 13 allegation in this case. And now, I do not think it is proper to cross examine a man to try to make him show whether he is amending his com-

plaint at this time to withdraw Section 13. I think we will proceed on the assumption that Section 13 is in here. Now, if Mr. Price cares to explain his position he can do so. If he does not why, I don't think it is proper cross examination to make him say whether he is standing on his complaint or intends to amend his complaint; it is there; we will have to accept that as the complainant's complaint until they want to amend it.

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[fol. 997] By Mr. Norman:

Q. First Mr. Price, do you care to answer (Tes. p. 969) the question I just asked, or rather let me put it this way. Do you care to state whether the Georgia Public Service Commission is here asking the Interstate Commerce Commission to order an increase in Florida intrastate log rates because these rates constitute a revenue burden on interstate commerce.

Exam. Hoy: Do you care to answer the question, Mr. Price?

A. I will answer in the same way that I answered the previous question at a previous hearing, and that is that the Georgia Public Service Commission is standing on the complaint as it was filed with the Interstate Commerce Commission alleging violation of Section 13 of the Act.

Exam. Hoy: I think that is sufficient.

Mr. Cotterill: It seems so, your Honor, that this question since the Florida Log Rate Case was tried came before the Commission as a whole, and quite fortunately seems to be settled by a majority of opinion, we read. "The Commission holds under such circumstances. * * *

Exam. Hoy: What case?

Mr. Cotterill: 172 I. C. C. 319. The majority opinion was written by Commissioner Lewis and there were dissents by Commissioners Eastman, McNamee, Farrow and Lee, on one branch of the case and another dissent by Commissioner Brainard on another. "The holding is under such circumstances as we have here that the allegations of violations of Section 13 must therefore be presumed to be raised on the provisions of (Tes. p. 970) paragraph 4, which appear to be undue or unreasonable preference or prejudice as between persons or localities in interstate commerce on

the one hand, and intrastate or foreign commerce on the [fol. 998] other". We stand most respectfully upon the holding of the Commission in that case that when on a record such as is here presented the complaint itself reads by reference to Section 13 as if it intended a violation of any part of Section 13. Then, when the case goes to trial it appears that the complainant's counsel by way of interpreting reference to Section 13 disavows any attack on the measure of the freight rate as in itself too low or constituting a burden on interstate commerce; then we now have the Commission's declaration that such a reference in the complaint to Section 13 must be and will be presumed to be confined to paragraph 4 of Section 13 which has to do with prejudice and disadvantage as between persons and localities and we most respectfully say, your Honor, that as to the question of getting at this true cross-examination we fully agree with you that this is the most awkward way to get at it, and our own thought was that we were entitled to raise this question and have it cleared up before the witness took the stand, but we deferred to your Honor's suggestion that it be covered through cross examination as to their position in the case.

Exam. Hoy: Well, my ruling is that Section 13 is in issue here. That the witness says that the complainant is relying (Tes. p. 971) the complaint as drawn, which involves Section 13.

Mr. Cotterill: What part of Section 13?

Exam. Hoy: Section 13.

Mr. Cotterill: We are entitled to know, under the ruling of the Commission.

Exam. Hoy: That was on the facts in that case.

Mr. Cotterill: We have the facts here. The complaint [fol. 999] refers to Section 13, but counsel at the former hearing disavowed any reliance upon the discrimination under paragraph 4 of Section 13.

Exam. Hoy: My ruling is that the unjust discrimination feature of Section 13 is an issue in this case.

Mr. Cotterill: And that the Georgia Public Service Commission, contrary to its previous declaration on this record, its declaration to the Georgia lumber manufacturer, as testified to in this case, Mr. Price, now sits here and acknowledges the correctness of the Examiner's ruling that

they are endeavoring to increase the Florida state rates on logs.

Exam. Hoy: The Commission in this case with a record which they have had before them made a finding of unjust discrimination of interstate under Section 13. The Commission thought that that was in issue at that time. There has nothing happened since. It went to the Supreme Court and as I understand the decision of the Supreme Court that question was there (Tes. p. 972).

Mr. Cotterill: No, your Honor is wrong.

Exam. Hoy: That question was there. They passed specifically on the question of unjust discrimination under Section 13, and they did not say that the issue was not present in the case; the Supreme Court did not say that.

Mr. Adair: May I read, your Honor, from the opinion on that.

Exam. Hoy: Yes.

Mr. Adair: "If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allega-[fol. 1000] tions of the complaint."

Exam. Hoy: The Commission said it was in issue.

Mr. Cotterill: They never have said it was in issue yet.

Exam. Hoy: They made a fitting.

Mr. Cotterill: That was only in the terms of the complaint itself.

Exam. Hoy: They made a finding, and that is my ruling here. That unjust discrimination under Section 13 is in issue in this case. Now of course you can get your exception on the record and raise that later on.

Mr. Cotterill: Your Honor permitted the cross examination of the witness as to their position in this case. I think (Tes. p. 973) you said:

Exam. Hoy: Yes, he said his position today is not changed that he was relying on the complaint as made—is that right?

The Witness: That is right. As to the transportation costs on lumber in and logs out at various manufacturing points from various origins to various destinations, my exhibit No. 1 did not give any such comparisons as that.

It did give information on the logs inbound from these specific points. In my testimony heretofore I have referred to lumber rates, cost of lumber transported, only in a general way as to discrimination against the Georgia manufacturer in reaching the Northern and Eastern markets on account of the log-rate situation. As to whether for a period of approximately two years there was in effect up to February of this year rates on the same level intrastate in Florida and interstate from Florida to Georgia, I don't know whether there was any movement of logs from Florida to Georgia. As to whether any Georgia [fol. 1001] shipper has been (Tes. p. 974) benefited by increasing the Florida rates, I have not investigated that feature of it. I am interested in that phase of the case very largely. That is why we are here today.

By Mr. Norman:

Q. Which you have not investigated to find out?

A. That there should be a parity of intra and interstate rates.

Q. You have not investigated to find out whether anybody is injured by lack of the parity, or anybody benefited by the parity?

Exam. Hoy: He said he had not, Mr. Norman.

Mr. Norman: All right.

Witness Price (continuing): Those rates have been in litigation all the while up to this time. I testified with respect to logs for anything. Rates on short logs and blocks for the near mills are not involved here at all. I think that was cleared up in the previous hearing.

Mr. Guthrie: That is the point we want to get entirely clear in this proceeding, Mr. Examiner, which we understand is (Tes. p. 975) a rehearing of the former case, at which proceeding, or in which proceeding short length logs or blocks were specifically excepted; we want it entirely clear on this record that this proceeding does not contemplate or include anything with reference to short length logs or blocks.

Exam. Hoy: Did you specify?

A. The Georgia Commission's complaint does not include short length logs; and if I recall correctly I testi-

fied to that effect in the previous hearing. It is not our purpose to involve the short length logs. There are specific rates on short length logs which today have been brought down to the interstate rates that we are now showing in [fol. 1002] our exhibits.

By Mr. Adair:

Q. Mr. Price, referring again to your exhibit No. 1, and the several sheets and pages of it and your testimony with respect to it, did I understand you to say that all of those questions were—all of those figures and comparisons were hypothetical to the extent that they were merely made to show the difference in rates existing as distinguished from any movement of logs or lumber under them?

A. I would not call it hypothetical, Mr. Adair, for the reason that it is a fact that these rates are published. (Tes. 976)

Q. Yes, sir; but——

Exam. Hoy: Wait a second the witness has testified that this is a comparison and to Mr. Norman's question he testified that he did not know of any movement of logs under any of those rates, isn't that so?

The Witness: And, in my opinion there could be no movement under the present discrepancy of interstate and intrastate rates.

Q. As to the period when there was no disparity was there any movement?

A. How is that?

Q. During a period of two years when there was no disparity?

A. I didn't say that there had been no movement; I said I did not know.

Exam. Hoy: He said he did not know whether there was any movement of logs under those rates at any time.

The Witness: That is right.

Exam. Hoy: That is what he has testified to.

By Mr. Adair:

Q. What I am getting to, as a matter of fact, you do not [fol. 1003] know that there has been any movement intrastate from those various points there do you to points in Florida?

A. I only know this, Mr. Adair. That these rates are actually published, and that the Georgia lumber manufacturers complained to the Groegia Commission of the situation which is outlined in our complaint to the Interstate Commerce Commission (Tes. p. 977) and which is illustrated here in my exhibits.

I have testified that I have no personal knowledge whatever of the movement of logs either interstate or intrastate between the points shown on sheet 2 of my exhibit No. 1, or any other sheet of the exhibit. I took the exhibit as a whole so far as my personal knowledge is concerned. Our Commission had to rely upon evidence that was submitted to it just the same as the Interstate Commerce Commission has to rely upon the evidence submitted to the Interstate Commerce Commission. The Interstate Commerce Commission would not know personally whether there was any movement or not but, if the complaint comes in there that there would be a movement there can not be a movement under a certain rate condition, then the investigation is made to determine what is that rate condition; and that is what the Georgia Commission did, and it resulted in this complaint.

Q. Did you ever get any complaint as to intrastate shipments (Tes. p. 978) as to any of these particular stations mentioned in your exhibit No. 1.

A. You mean interstate shipments?

Q. As to the interstate rates, did you ever get any complaints from Georgia shippers with respect to the rates from any of these points in your exhibit No. 1?

A. I don't recall whether the specific points of shipment were specified or not. I do know that witnesses or Georgia manufacturers as witnesses did refer to specific points in their testimony where they could purchase logs under a reasonable rate adjustment. That was in this proceeding, and I am referring to this case on original hearing. As [fol. 1004] to whether that testimony of theirs to which I referred identified one tract of timber known as the Eppinger & Russell tract, there were other witnesses and various witnesses as I recall that refused to say where the timber was located, did testify that they were in possession and knew where timber was under a proper rate adjustment, but refused to say where it was. (Tes. p. 979). That is true.

As to whether or not after the Georgia Public Service Commission filed the complaint in this proceeding it was visited by representatives of the Georgia lumber mills in respect to the intention of this complaint, and whether a conference was held between my commission and representatives of the Georgia lumber mills regarding that matter, I don't recall. As to whether any Georgia manufacturer requested the filing of this complaint before it was filed, there were various Georgia manufacturers that asked the Commission to reopen the case that was then pending before the Georgia Commission concerning an order that had been issued by the Georgia Commission, and the Commission, when it was made known to the Georgia Commission, found that additional evidence could be submitted, the Georgia Commission reopened that proceeding, suspended the rates and had that hearing, and these Georgia shippers brought before the Georgia Commission the Florida situation. It was brought into the record before my commission (Tes. p. 980) the existence of the Cummer scale within Florida. I don't recall whether it was set up as a comparison with the tentative rates pending before the Georgia Commission but, it was a complaint that they were already at a disadvantage with the Florida shipper. I do nof mean to say that owing to the higher rates on logs [fol. 1005] within Georgia than within Florida the Georgia lumber manufacturer was complaining to us that he was already at a disadvantage. The complaint to the Georgia Commission was as I recall it that right across the border the Florida man could haul his logs at so much between points in Florida and yet the Georgia man could not go into that same tract of timber or for an equal distance and draw logs into the Georgia shipping points. As to why that was complained of to us, and as to whether we had anything to do with those interstate rates (Tes. p. 981) our Commission has a great deal to do with it under our law. The matter was brought to our attention and the Georgia Commission then suspended the intrastate rates and complied with the Georgia law that we have of getting the interstate adjustment associated to it, first by going to the Atlantic Coast Line Railroad, and then appealing to the Interstate Commerce Commission for relief. The case before our Commission concerned rates on logs between points in

Georgia. As to whether the rates between points within Florida that were brought to the notice of our Commission or rates from Florida to Georgia in that particular proceeding, as I recall it, Mr. Cotterill, I know that the rates between points in Florida were brought to the attention of the Georgia Commission. As to whether this was by showing the comparison with our tentatively * * * now it has been four or five years since (Tes. p. 982) that hearing, and I could only speak from memory.

By Mr. Cotterill:

Q. It was by way of comparison between Florida Cummer scale and your own tentative log rates in Georgia, that the Florida log rates were brought to your notice?

A. The Georgia rates, of course, are not involved here, and I want it understood, Mr. Examiner, that I am not discussing the Georgia rates here at all—may have been brought into the record, but I do know that the Georgia [fol. 1006] shippers were complaining as to the intrastate Florida rates versus the interstate rates, and that brought on this complaint in the Georgia Commission. That is my recollection. They may have compared the Georgia rates that were under suspension. Following the information that I obtained at that time, which I have just been describing, I then brought the matter to the attention of the Atlantic Coast Line Railroad (Tes. p. 983). The request that we made of the Atlantic Coast Line Railroad was to remove what in the opinion of the Georgia Commission was a discrimination against the Georgia shipper. As to what I mean by removing that discrimination, I don't recall that the Georgia Commission suggested how that discrimination should be removed. As to whether I am now undertaking to correct my former testimony in this case on that point, I don't recall just how I testified on that particular point. As to whether I testified that "the matter was brought to the attention of the Atlantic Coast Line traffic officials with the request that they consider extending the Florida intrastate rates complained of into Georgia," that may have been. As to whether it was or not, I say it has been four or five years since that matter was handled, and I can only testify now from recollection. I was not testifying from recollection then, at that time. (Tes. p. 984) I had my files with me at that time. It is more likely that

what I said then was correct than any point of past recollection.

Q. Now then if such was the request which you made upon the Atlantic Coast Line Railroad and which was declined you then filed this complaint.. Was it for the same purpose?

A. The complaint of course speaks for itself. I drafted [fol. 1007] the complaint myself. I know what was in my mind when I dictated the language used in that complaint.

Q. Now, granting that the complaint speaks for itself, I am now not concerned with the language use- in the complaint as lawyers or courts would chew over its effect—I am talking about your own state of mind entirely. Did you in the choice of language which you used in that complaint undertake to secure by that complaint the thing which you asked the Atlantic Coast Line Railroad to do, and which they declined to do?

A. I did not, Mr. Cotterill. If my correspondence with the Atlantic Coast Line Railroad asked them to extend the Florida intrastate rates into Georgia, our complaint to the Interstate Commerce Commission was strictly in accord with the Georgia (Tes. p. 985) law, which requires that the Georgia Commission shall appeal to the Interstate Commerce Commission for relief, and that is the gist of our complaint, we appealed for relief alleging this discrimination.

Q. Yes. I am now concerned with what relief in your own attitude of mind, you were appealing regardless of the accident of the language you happened to use in drafting your complaint—and I want to know whether the relief which you then contemplated was the same as that which you had asked the Atlantic Coast Line Railroad to give you?

Mr. Alston: We object to that. The Commission has ruled on substantially the same question.

Mr. Cotterill: I am accepting the Examiner's ruling insofar as he has ruled, and I am not now passing to any appeal from that ruling, but I am going——

Exam. Hoy: I will sustain that objection, Mr. Cotterill. [fol. 1008] The complaint shows what is in issue and we are not interested so much as to what was in the man's mind as when he drew the complaint, we are interested in what the complaint alleges.

By Mr. Cotterill:

Q. Now, Mr. Price, when you were on the stand in the prior hearing of this case you testified that this is not a revenue case.

Mr. Alston: We renew our objection.

Mr. Cotterill: I am asking you what did you mean by that statement (Tes. p. 986).

Exam. Hoy: I think that is immaterial, Mr. Cotterill. The witness is testifying that he stands on the complaint as drawn. I have made a ruling that the complaint as drawn alleges unjust discrimination under Section 13, and unjust discrimination under Section 13 is a revenue case.

Mr. Norman: No, you are mistaken about that Mr. Examiner, I respectfully submit.

Exam. Hoy: Under unjust discrimination under section 13.

Mr. Norman: I do not want anything on the record except an exception to that statement of the law.

Mr. Cotterill: Your Honor, perhaps it would determine the line of examination in which I was undertaking by candidly asking your Honor, if you are disposed—I realize you don't have to do so—if you are disposed to indicate the ruling which you have made, that it goes to the length of declaring that in terms of the complaint, and such legal inferences as may be drawn therefrom control in disregard of any contrary declarations by the complainant in the course of the proceeding. Now, if your Honor would aid us to a complete understanding of your ruling on that [fol. 1009] point, it perhaps will end this discussion entirely.

Exam. Hoy: Well my thought is this that the complaint alleges a violation of Section 13, the Commission when it originally decided the same said Section 13 was in there, and made a finding, a Sec[illegible] 13 finding. The case went to the (Tes. p. 987) Supre[illegible] Court. The Supreme Court did not say that Section 13 was not in issue. The case is reopened for further hearing. The witness testifies and states that the complainants rely upon the complaint as drawn which, as I understand alleges Section 13 violation. Now, I think it is entirely immaterial to inquire what was in his mind when he drew the complaint. What was in his mind is not the important thing, it is what he alleges

in his complaint is important, what the issues are. Now, I think it is useless to ask him further questions as to whether he intended this, or whether he intended this or that, or whether he wants to change. He has already stated that he does not want to change his complaint, he stands on it.

Mr. Cotterill: Your Honor's ruling I take it then is——

Exam. Hoy: So I take it we should go along and introduce our evidence from the issues as I understand them to be. Of course you can make your exceptions to my ruling as to what the issues are, as you have done, and then you can argue that.

Mr. Cotterill: I do not want to misstate the Examiner's ruling, but it controls whether I undertake to express it or not. Under your Honor's ruling it is in the terms of the complaint which prevail as against any declaration by the complainant's counsel or witnesses in the former hearing, or such as might be elicitated by further examination here.

[fol. 1010] Exam. Hoy: Well if the witness, or the witness and counsel want to explain further his complaint or he wants to (Tes. 988) change his complaint, if he wants to withdraw a part of it, of course he is at liberty to do so, but he has said two or three times that he has alleged Section 13, and he says he wants to stand on that complaint as drawn. Now, the complaint as drawn, with what the complainant testified to, and with what explanation he made of that complaint at the former hearing, on that old record, the Commission said there was a Section 13 allegation in there and made a finding on it. Now, if he wants to change it further, or if he wants to rely on his complaint as interpreted in the previous record, he can do so, he can change it.

Mr. Cotterill: I think your Honor's ruling is now perfectly plain to us, and I take it the original exception to the ruling operates as well to the enlarged statement.

Exam. Hoy: Certainly. The record will now show.

Mr. Cotterill: I shall not pursue this line of inquiry further. We will try out the other question as we go along.

Mr. Norman: I want to ask this question then as to your ruling. Of course Section 13 covers undue prejudice and preference as between persons and localities and revenue burden.

Exam. Hoy: Yes, when I said Section 13 is revenue I meant unjust discrimination against interstate commerce, that is in Section 13. I did not mean to say that Section 13 was solely revenue but, I did mean to say that it was revenue (Tes. p. 989).

Mr. Norman: Now if your Honor please, the complainant has offered no evidence either in the previous hearing [fol. 1011] or now under the revenue burden provisions of Section 13 and we therefore insist that that question is not in this case any longer, and that the defendant cannot offer evidence as to revenue burden in a proceeding wherein the complainant has not done so.

Exam. Hoy: My ruling will be that the defendants may introduce such evidence. Of course, you can make your exceptions at that time.

Mr. Gutheim: Are the defendants to be permitted now to make a Section 13 case in face of the denial in their answer that there is no Section 13.

Exam. Hoy: In face of the denial by whom?

Mr. Gutheim: They answered, a general denial.

Mr. Gwathmey: Mr. Examiner, I will have to have a word here. I hate to prolong the discussion. There has been a great deal said up to this time what position the Georgia Public Service Commission has taken in this case at one time or another, and I had intended to suggest that the record be allowed to speak for itself on that subject. Now, these gentlemen are undertaking to state in the record what the defendants have or have not done in their pleadings and I shall ask leave to refer to the answer filed by defendants and particularly paragraph 9 of that answer (Tes. p. 990).

Witness Price (continuing): As to my testimony in reply to some questions just propounded to me to the effect that the Georgia shippers made complaint to the Georgia Commission as to these Florida rates, which we call the Cummer scale of rates, that was in 1925 at the time of the rehearing on some of the Georgia Commission's proposed lumber rates, or log rate scales. As to the nature of the complaint which the Georgia shippers then made against the Florida rates, I do not recall the details of it but, it [fol. 1012] is all in this record in my additional testimony at Valdosta. I quoted the very complaint which was submitted to the Georgia Commission in that rehearing, which

is quoted in this record here, and that applies now. That of course remains unchanged (Tes. p. 991).

My headquarters are Atlanta, the state capitol, yes, sir. In the course of my duties I go about throughout the State of Georgia from time to time occasionally. As to my personal knowledge of the location of any lumber mills now in operation on the line of the Atlantic Coast Line Railroad in South Georgia, I know of a mill at Valdosta and Waycross and the mill in Albany, Albany being served by the Atlantic Coast Line; I don't know whether that mill is on the tracks of the Atlantic Coast Line or not but, it is located at Albany. I have seen those mills, yes. I do not know anything about where those mills get their logs. Personally I do not know where they ship their lumber. I am speaking from personal knowledge (Tes. p. 992). I can only rely on what those witnesses from those points have testified in this case and previous cases. I have not any further witnesses. That is complainant's case.

Mr. Cotterill: Your Honor, we reserved until this time the recording officially a motion which of course we understand is hardly addressed to any function of the Examiner but which we are now stating, we announce our intention to rely upon and will press in brief and argument at least that far in the matter. Come now intervening shipper defendants herein, and in the light of the Examiner's ruling declaring that the undue burden issue is involved in this case by the proceedings of the complaint, respectfully move dismissal of that part of the complaint of the Georgia Public Service Commission, which as thus con-
[fol. 1013] strued, would allege that the Cummer scale of the Florida intrastate log rates unduly burdens interstate commerce. The ground of this motion is the absence of any legal interest in such matter of the Georgia Public Service Commission or any Georgia shippers or any (Tes. 993) showing or attempt to show this on this record; and I am reminded that since the complainant has now announced the complete close of its case, we ground a motion of dismissal so as well upon the further contention that the complete and purposeful omission of the complainant to submit any evidence whatsoever in support of any such allegation compels a ruling that no such matter is now in issue, and that in any event the complaint as to such issue must be dismissed because of the failure of the complain-

ant to introduce any evidence whatsoever intended to support it.

Exam. Hoy: Of course, Mr. Cotterill, I have made my ruling on what is in issue, you know that, and I cannot dismiss the complaint.

Mr. Cotterill: I said that in the beginning your Honor. This is merely an indication of our attitude towards that matter which we will follow up later.

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DEFENDANT'S TESTIMONY

J. W. PERRIN, recalled as a witness, having been previously sworn, testified as follows:

My relations to the Atlantic Coast Line now are the same as they were when I testified (Tes. p. 994) before. At the time of the previous hearing I held the title of Assistant Freight Traffic Manager, and I am now Freight Traffic Manager. I have maintained my connection and authority over, and jurisdiction over these rates and matters involved in this case during all this time. I will [fol. 1014] review the exhibits previously filed by me in this case, indicating what changes have taken place that affect the correctness of these exhibits as of this date. In my exhibit No. 11 are shown mileage scales of rates on Atlantic Coast Line Railroad to, from and between points in Florida. At this time the interstate rates to and from North Florida points, as prescribed by the Commission in this case, and interstate rates to and from South Florida points made 15 per cent higher than the scale prescribed to and from North Florida points are in effect and are shown in Supplement No. 52, pages 75 and 76, to Agent Glenn's I. C. C. No. A-659 (Tes. p. 995).

The scale prescribed by the Commission, to which I refer as our standard scale, is substantially the same scale that has been prescribed or approved by the Commission for application on the Atlantic Coast Line in all situations that have been dealt with by the Commission. The scale originated with the Commission's decision and order in the case of Pierpoint Manufacturing Company versus Southern Railway, 50 I. C. C. 81, and was prescribed to apply from Southern Railway stations in South Carolina

to Savannah, Georgia. Subsequently, in the case of Southern Veneer Association, 62 I. C. C. 669, the Commission prescribed this scale on logs from South Carolina points on the Atlantic Coast Line and Seaboard Air Line to North Carolina destinations. This was followed by the case of the Southern Cotton Oil Company versus Atlantic Coast Line Railroad, 120 I. C. C. 190, in which case the Commission prescribed this same scale of rates to Savannah, Georgia, from points on the Atlantic Coast Line in South Carolina. As reported in 136 I. C. C. 370, the Commission approved the same log rates from North Carolina points on the Atlantic Coast Line to Virginia Cities. In the meantime, the Alabama Railroad Commission adopted [fol. 1015] this same scale, which is now in effect on the Atlantic Coast Line in Alabama, and the Public Service Commission of Georgia likewise adopted it for intrastate application in Georgia, but as has been previously shown in the record, the Georgia Commission suspended the application of (Tes. p. 996) this scale because of the existence of the Cummer scale in Florida. The South Carolina Commission prescribed this same scale for application in that State, but subsequently made some reductions based upon the comparison with intrastate rates in North Carolina that have not yet been revised on basis of this scale. The trunk line carriers in North Carolina filed with the North Carolina Commission a petition seeking the application of our standard scale, on which a hearing has been held, but the North Carolina Commission has withheld its decision. The Corporation Commission of Virginia approved this scale for application on the Atlantic Coast Line in Virginia and it is now in effect in that state. Therefore, our standard scale, dating from its establishment in the Southern Veneer Association Case, has become effective in all interstate situations on the Atlantic Coast Line, and has become effective for intrastate application in Alabama and in Virginia. The reasons for its non-application in Georgia were explained at the previous hearings, and I have just stated the circumstances under which this scale is not yet applicable for intrastate application in North Carolina and South Carolina. The record in the present case shows the conditions under which it is not being applied within the State of Florida (Tes. p. 997).

So far as interstate traffic is concerned, the changes made in the rates from North Carolina to Virginia Cities resulted in increases, but in all other interstate situations [fol. 1016] substantial reductions resulted. In the intrastate situation in Alabama the use of this uniform scale produced increases in previously existing rates, while in Virginia there were both increases and reductions.

As to the desire of our Company to secure uniformity in the level of log rates between all points on our lines, I have previously explained that when, on May 29, 1925, the Georgia Commission suspended intrastate rates that had been authorized to become effective April 15, 1925, the Atlantic Coast Line adopted as its general interstate basis of log rates the same scale of rates that had been submitted to the Georgia Commission as net rates on logs handled under transit, notwithstanding the substantial reductions in interstate rates that resulted from the adoption of that scale, and that scale, as shown in my exhibit No. 17, was in effect at the time of the previous hearings in this case. Nevertheless, because of the decisions of the Interstate Commerce Commission in the several cases involving our interstate log rates in particular situations, we submitted at the first (Tes. p. 998) hearing of this case the present standard scale, which is substantially the same scale as prescribed by the Commission in the several cases to which I have previously referred, and this scale was prescribed by the Commission in this case. Notwithstanding the resulting reductions from every revision that has been made in our interstate rates, except from North Carolina to Virginia, and notwithstanding the fact that the interstate rates previously in effect were not unreasonable except as influenced by consideration of differences in rates in our immediate territory, we have felt that the losses resulting from these reductions would be offset by the revision of intrastate rates if this reduced level of interstate rates could be made uniform in its application [fol. 1017] throughout our system. Except in Florida logs are handled on our line in and between the several states that we serve under very much the same condition, and, unless we differentiate the Peninsula of Florida as is done with regard to general traffic, there appears to be no reason for a difference in the level of log rates between any parts of our lines. Logs have constituted, and still

constitute, a substantial portion of the traffic transported by the Atlantic Coast Line, which, because of our geographical location, is a large handler of forest products generally, including logs. Because of the large volume of log traffic, its existence along the entire length of our line and the similarity of conditions under which logs are (Tes. p. 999) transported, it readily appears that there is urgent need of such uniformity as will remove discrimination and of a general revision on a fairly compensatory basis. Except in Florida the conditions under which logs are transported are so nearly uniform as to condemn low and unremunerative rates in one situation while applying no higher than fairly remunerative rates in other situations on our system.

The interstate basis of rates on logs prescribed by the Commission for application between Georgia and Florida is now applicable interstate over the entire system of the Atlantic Coast Line except that in South Florida the present interstate scale is 15 per cent higher.

By Mr. Gwathmey:

Q. Would the Atlantic Coast Line Railroad Company ever have proposed to the Interstate Commerce Commission the scale of rates which the Commission adopted in this case for application interstate between Georgia and Florida except upon the expectation that those same rates would likewise be adopted intrastate in the various states served by the Coast Line?

[fol. 1018] Mr. Adair: Just a moment. That seems to me to be a very broad assumption, what they would or would not have done.

Mr. Gwathmey: I am asking the opinion of a Coast Line official (Tes. p. 1000).

Mr. Adair: Contrary to the previous testimony that they were not proposing new rates in this proceeding.

Mr. Gwathmey: Is that the ground of the objection?

Mr. Adair: That is one of them.

Mr. Gwathmey: It seems to me you are right on that.

Mr. Adair: And also it calls for a conclusion what they would not have done under certain circumstances that are not shown here to exist.

Exam. Hoy: You may answer the question.

A. We would not. As a matter of fact the record at the previous hearing when this scale was submitted called attention to the fact that the Interstate Commerce Commission had prescribed this scale in their interstate situations, and that we were proceeding with the several intrastate commissions to secure the adoption of this uniform level of rates.

By Exam. Hoy:

Q. You also testified at the former hearing did you not that you intended to make no change in the intrastate rates in Florida?

A. Except as ordered by the Commission; yes, sir. In my previous testimony on that subject that applied (Tes. p. 1001) to the conditions existing at that time which were fully explained in the record of this case. I offer exhibits, Nos. 54 to 77 inclusive.

My exhibit No. 54, marked No. 54, is for the purpose of showing the abnormally low level of the so-called Cummer [fol. 1019] scale as applied in Florida. It is supplemental to exhibits that I filed at the first hearing of this case, Nos. 18, 19 and 20, in which I set forth the comparison between rates and revenues on logs under the Cummer scale and rates and revenues on the lowest grades of traffic that we handle, consisting of brick, gravel, sand, lime and cement.

The rate practices of the railroads in the South as a whole differ as to the method of assessing charges on sawmill logs. Lines in the eastern part of the South have no transit on logs, while lines farther west publish both local log rates and net transit log rates. The practice of lines such as the Atlantic Coast Line, Southern, Clinchfield, Nashville, Chattanooga & St. Louis and Seaboard Air Line is to apply flat local rates to manufacturing points, the ultimate collection of charges on the logs being made upon delivery at the manufacturing point. On the other hand, the Frisco, Illinois Central, Mobile & Ohio, Gulf, Mobile & Northern and Louisville and Nashville provide both local rates to be used independent of transit and net transit rates as a basis for charges on the weight of the logs corresponding to the weight of the lumber shipped out from the manufacturing point.

In this exhibit No. 54, there are shown the local rates of all the lines listed in the exhibit except the Frisco, whose

tariff of local rates was not available when the statement was prepared. The exhibit also shows the net transit rates of those lines operating under that plan. In the case of the Atlantic Coast Line in Florida, the so-called Cummer scale applies to the mill without transit features, and likewise the local scale shown under the column headed "Atlantic Coast (Tes. p. 1003) Line Railroad" applies in all inter-[fol. 1020] state situations and in the intrastate situations in which this scale, which is the scale prescribed by the Commission in this case, has been adopted. Manifestly, under the plan of local rates to the mills these local rates apply whether or not the output of the mills is shipped via the line transporting the logs, and said local rates also apply even in cases where there is no manufactured product to be shipped by rail. On the other hand, under the transit system of some of the lines in the South, the local rates do not have final application on the logs, but are subject to the reduced net transit rates as a cut back against the weight of the logs corresponding with the weight of the product shipped out; consequently, logs moving on the lines using transit pay much higher freight charges when there is no reshipment under transit.

In order to present the situation both as to local shipments of logs and as to shipments of logs handled under transit, I have made in this exhibit the comparison to show both effects. In addition to showing the abnormal low level of the Cummer scale, whether applied on logs to be manufactured and reshipped as lumber or on logs for other disposition, this comparison tends to justify as not too high the interstate scale of the Atlantic Coast Line as prescribed by the Commission, which, incidentally, the exhibit shows is the same as the scales of the Southern Railway and Seaboard Air Line (Tes. p. 1004), and substantially the same as the scale of the C. C. & O. Railway, and the same as the net transit rates of the Louisville & Nashville. It will readily appear how closely the net transit rates of the Frisco, the Illinois Central and the Mobile & Ohio correspond with the local interstate scale of the Atlantic Coast Line, while the local rates of the Frisco, Illinois Central and Mobile & Ohio are very greatly in excess of [fol. 1021] this local scale of the Atlantic Coast Line. As to the Gulf, Mobile & Northern Railroad, the reshipping or net transit rates vary from one-half cent to 1 cent from

the Atlantic Coast Line's local scale, while the local rates of the Gulf, Mobile & Northern are practically twice as high as the Atlantic Coast Line's scale. The Louisville & Nashville Railroad's transit rates, which are the same as Atlantic Coast Line local rates, conform quite closely with the transit rates of the Frisco, the Illinois Central and Mobile & Ohio, while the Louisville & Nashville's local rates are as high as, or higher, than the rates of the Illinois Central, Mobile & Ohio and Gulf, Mobile & Northern.

Throughout the history of logging operations on the Atlantic Coast Line the practice of this company has been to make its local log rates available on logs to be used in the manufacture of lumber; this practice having begun more than forty years ago when lumber represented more than a third of our total traffic, and this practice resulted in a low level (Tes. p. 1005) of local log rates, that is reflected in our present rates.

Nevertheless, logs move from Atlantic Coast Line stations to the ports for export, and logs are shipped from our stations to manufacturing points in the south on other lines and to the East, on all of which logs are applied the low level of the rates that have been made in consideration of revenue on manufactured product. This exhibit shows not only that the application of our interstate scale of rates as prescribed by this Commission fully protects the users of logs in their competition with the users of logs in all other parts of the South, but it also shows the extent to which the Cummer scale of *of* log rates in Florida gives an [fol. 1022] advantage to the users of logs in Florida.

Q. Now, combining log transportation costs with lumber transportation costs, please explain your exhibit marked No. 55.

Mr. Norman: Now if the Examiner please, this defendant here is offering evidence apparently to show that the Cummer scale of rates applicable in Florida is unreasonable. Now I wish to object to any evidence that goes to the reasonableness to the Cummer scale of rates, the Supreme Court in its opinion in this case said, "The authority to determine the reasonableness per se of intrastate rates lay with the state itself and not with the Interstate Commerce Commission." That is the law of this case, and we submit that they should not be allowed to offer evidence

as to the reasonableness of (Tes. p. 1006) the Florida intrastate rates.

Mr. Alston: Mr. Examiner, we admit that the statement read is the law of this case. We have no idea of undertaking to transpend it. Unreasonableness in a legal rate may very well be an element in working discrimination against another interstate rate or interstate commerce, and it is only as an element of proving discrimination that we are going into the question of reasonableness. This particular question that we are now proposing is not alone addressed to unreasonableness, it is addressed directly to discrimination against persons, places and traffic.

Mr. Norman: Now, if the Examiner please, the question of reasonableness does not have the bearing upon the question of undue prejudice; the Supreme Court of the United States has held although rates may be reasonable and still constitute undue prejudice, they may be unreasonable and [fol. 1023] constitute undue prejudice. So that we insist that it is not competent to go into the question of reasonableness in order to establish a question of undue prejudice.

Exam. Hoy: I think it is competent to go into the question of reasonableness under Section 13 allegation, which I construe this means unjust discrimination against interstate commerce. Because if the Interstate Commerce Commission finds unjust discrimination against interstate commerce, it would be incumbent upon them to fix a reasonable basis of (Tes. p. 1007) rates to remove the discrimination thus found, and in connection with that Section 13 allegation I think the evidence is admissible.

Mr. Norman: Mr. Examiner, the Section 13 allegation in view of the evidence offered by the complainant, and the position of the complainant must be taken to be an undue prejudice.

Exam. Hoy: Well, I have made my ruling Mr. Norman, that Section 13 is in there, including unjust discrimination against interstate commerce.

Mr. Norman: By that you mean revenue burden.

Exam. Hoy: Yes.

Mr. Norman: If you will just indulge me while I read a few lines of the case of——

Exam. Hoy: I don't think it will be necessary, that is just to use more time, to make the ruling. Now, if my ruling is right you can refer to that ruling in the Berry case.

Mr. Norman: Well, it is ordinarily customary to be *be* heard on an objection like that especially if you have a case which you claim is decisive of the question.

Exam. Hoy: Well, I don't think that would decide the [fol. 1024] question. Because the facts in a particular case can not determine what the issues in another case are.

Mr. Norman: That is a statement of law and not of facts made here, by the Commission.

Exam. Hoy: Well, the decision has been referred to in the (Tes. p. 1008) record once, by Mr. Cotterill.

Mr. Norman: All right.

Mr. Adair: May I just call your Honor's attention to one thing on the question of this reasonableness. Our good friends, the Atlantic Coast Line Railroad Company at no time and at no place in any pleading, not even the subsequent motion have asserted that this so-called Cummer scale was a burden on interstate commerce, they have not done so directly or by implication, back and forth, or up and down.

Exam. Hoy: I do not think that is any reason why this evidence is not admissible. They can put it in evidence as I see it, not having done so previously.

A. This exhibit is for the purpose of showing the relationship of transportation costs between manufacturers of lumber in Florida and in Georgia when in both cases rail transportation of logs to the mills is necessary. It assumes the three-for-one rule heretofore presented in this case whereby approximately three cars of logs are consumed in producing one car of lumber. The exhibit shows the transportation cost on 150,000 pounds of logs, approximately three cars, for distances ranging from 25 to 150 miles, based upon the Cummer scale to the Florida milling points and upon the interstate scale to the Georgia milling points. It then shows the transportation cost on a 50,000 pounds [fol. 1025] car of lumber to (Tes. p. 1009) representative Eastern destinations and a consolidation of the log transportation costs with the lumber transportation cost as the total transportation cost to and from each of the mill points. The same lumber rates apply from all South Georgia stations on the Atlantic Coast Line to Eastern destinations, while the lumber rates from Florida points are the same as from Georgia points from Jacksonville, 3 cents per 100 pounds higher than Georgia points from Loughman and

Groveland, Florida, and 1 cent per 100 pounds higher than from the South Georgia points from Perry, Gainesville and Palatka, Florida. Incidentally, the relationship between the lumber rates may be assumed to be correct, inasmuch as the rates were prescribed by the Interstate Commerce Commission. In the last three columns of the exhibit are shown the amount of money disadvantage against the Georgia manufacturer as against manufacturers at the Florida points in the sale of lumber at the Eastern destinations used as illustrations. Manifestly the disadvantage in transportation cost as against the Georgia manufacturer is altogether because of the differences between the level of the log rates within Florida and from Florida to Georgia. It will be noted that as against the Florida mill points the minimum disadvantage of the Georgia manufacturer is $11.85 per car of lumber on a log haul of 25 miles, with a maximum disadvantage of $61.50 per car of lumber on a log haul of 150 miles. (Tes. p. 1010)

My exhibit No. 56 shows the lines of the Atlantic Coast Line in Florida, the location of Perry, Florida, as a point receiving logs, and by a system of solid line circles there are shown what portions of the state of Florida are embraced within the several circles measuring 50, 75, 100, 125 [fol. 1026] and 170 miles from Perry, together with the rates applicable to Perry under the Cummer scale from points included within each of these circles. By a system of dotted circle lines around the location of Perry there are shown the rates to Perry as they would be under the interstate scale prescribed by the Commission in this case from points included within these circles. The exhibit is merely a convenient method of indicating the differences in the extent of territories from which logs may be shipped at the same rates per 100 pounds under (Tes. p. 1011) the Cummer scale and under the scale prescribed by the Commission in this case. To illustrate, the log rate of 3.2 cents per 100 pounds under the Cummer scale covers a movement up to 125 miles, while rate of 3 cents under the interstate scale would cover a movement up to 20 miles. The rate of 3.2 cents in the Cummer scale would cover a movement from points as far south as Lacoochee, while the interstate rate of 3 cents would apply only from adjacent points within 20 miles. The succeeding four exhibits show the same char-

acter of information as to Jacksonville, Palatka, Loughman and Lacoochee as points of destination. It will be noted that under the Cummer scale to points near the center of the state, such as Loughman and Lacoochee, rate of 3.7 cents per 100 pounds would cover the movement of logs from practically the most remote points on the Atlantic Coast Line in Florida, while under the interstate scale a rate of 3½ cents per 100 pounds would cover a movement for a distance no greater than 30 miles. This set of exhibits is not intended to show that from every point within each of the circles measuring the Cummer scale the rate would necessarily be the rate shown as applicable for distances within that circle, because circuity of route would in some cases make the distance greater than the air line distance measured by the circles, but they illustrate in a [fol. 1027] graphic way the differences in rates under the Cummer scale and under the interstate scale as applied to (Tes. p. 1012) these particular situations in Florida.

My exhibit marked No. 61 is a statement showing for the period February 9, 1929, to January 31, 1931, the movement of long length logs between Atlantic Coast Line stations in Florida. February 9th coincides with the date of the effectiveness of the Interstate Commerce Commission's order. January 31, 1931, was nearly the period up to which the Accounting Department could carry this statement. In other words within the limit of the time they brought it up to January 31st. On the title page is shown a recapitulation of the contents of the succeeding pages. The statement shows shipping points, destinations, distances, number of cars, weights as billed and revenue collected on basis of the scale prescribed in this case by the Interstate Commerce Commission, together with the revenue that would have been collected if the so-called Cummer scale had been applied. There are twenty destinations to which logs moved during that period. Attention is called to the fact that the statement includes only the long length logs as distinguished from logs of six feet or less in length. It may be necessary to explain that the weight as billed does (Tes. p. 1013) not always correspond with the weight on basis of minimum of 50,000 pounds per car, because under the scale of rates actually applied the carload minimum is 40,000 pounds, while under the Cummer scale the carload minimum is 50,000 pounds, so that in re-rating the traffic under

the Cummer scale it is necessary to observe on each car minimum of 50,000 pounds. The recapitulation shows the movement to have consisted of 18,602 cars, on which reve- [fol. 1028] nue collected amounted to $571,508.94 and on which the revenue computed under the Cummer scale would have been $281,225.75, a difference of $290,283.19. It may not be amiss to call attention to the fact that if the same quantity of logs had moved interstate on our line for the same distances as set forth in this statement the charges would have been slightly more than double the charges that would accrue under the Cummer scale in Florida.

This exhibit No. 61 shows the logs that have actually moved in Florida during the period in which the intrastate rates were advanced as ordered by the Interstate Commerce Commission. The figures on this exhibit were taken from the way-bills by our Auditing Department.

As showing the general distribution of these movements of logs in the different parts of the State of (Tes. p. 1014) Florida, my exhibit No. 62 is a map of the lines of the Atlantic Coast Line in the State of Florida on which are shown the names and locations of the twenty points of destination to which the logs moved as per the preceding exhibit, No. 61. The purpose of the map is to show at a glance that the movement of logs is not restricted to any particular part of the State. On this exhibit are listed the destinations and the minimum and maximum distances which logs moved to each of those destinations. I am afraid that I could not take this exhibit and indicate in a general way the location of the line passing through Burnetts Lake, which has been referred to frequently in this proceeding. It does not appear on that exhibit. That line so far as this map indicates would pass across the State approximately in the vicinity of Gainesville as shown on the map. As to what extent the statement of this movement of logs in- [fol. 1029] cludes train load movements: there were 7,350 cars by special train movement from Hines to Palatka and 2,862 cars in special train movement from (Tes. p. 1015) Homosassa to Lacoochee. All over movements were in regular trains handling logs and other traffic promiscuously. There were, therefore, 10,214 cars handled in special log train service, and 8,388 cars handled in ordinary pick-up service. I spoke of special trains moving from Hines to Palatka, these were movements to the Wilson

Cypress Company. As to how often that train moves in ordinary course, I think it is running every other day, yes sir, and that accounted for 7,350 cars. The 2,862 cars to which you refer was also a special train movement from Homosassa to Lacoochee. I referred to the total as 214 a little while ago. It would be 212 of this 1,652. Here is 810. There is a little discrepancy of 2, that is all (Tes. p. 1016).

Now those shipments to Homosassa and Lacoochee went to Cummer Cypress Company. There was 8,388 cars handled in ordinary pick-up service. They are widely scattered in points of origin and destination; the statement shows the points of origin and the destination and so far as the destinations are concerned this exhibit No. 62 shows to what extent the movement was in the several parts of the State of Florida. In other words the destinations named like Perry, Live Oak, Baldwin, Cross City, and Otter Creek, and so forth, on this map are the destinations of the logs. They are the destinations for all of the cars on this map. It shows all of the destinations. It shows Palatka and Lacoochee and so forth.

By Mr. Alston:

Q. In your exhibit No. 61 it is shown that on the long length logs moved in Florida for the period February 9, 1929, to (Tes. p. 1017) January 31, 1931, inclusive, the [fol. 1030] charges would have been reduced slightly more than one-half of the actual charges if the so-called Cummer scale had been applied. What would have been the approximate effect upon the revenues of the Atlantic Coast Line during the same period if the Cummer scale had been in effect for interstate and intrastate movement of logs throughout your system?

A. During the years 1929 and 1930 the movement of logs on our system, including the long length logs in Florida, consisted of 3,450,765,300 pounds, of which the interstate movement consisted of 456,134,800 pounds, leaving intrastate movement of 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,424.87, of which the revenue on interstate movements amounted to $266,654.12 and the intrastate earnings amounted to $1,216,770.75. If the Cummer scale had been applicable on all of our log movement the reduction in revenues would have been approximately as follows:

| | |
|---|---|
| Virginia, intrastate | $2,926.20 |
| North Carolina, intrastate | 95,804.17 |
| South Carolina, intrastate | 89,933.48 |
| Georgia, intrastate | 29,068.53 |
| Florida intrastate long logs | 290,283.19 |
| Alabama, intrastate | 13,245.47 |
| Interstate | 144,259.88 |

As a summary, if the Cummer scale had been uniformly (Tes. p. 1018) applied the earnings of the Atlantic Coast Line would have been reduced approximately $665,520.92. These figures represent approximate losses, and they are not based upon an actual re-rating of the tonnage, except upon the long length logs in Florida, the losses on the interstate movement and on the intrastate movement other than [fol. 1031] in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.

Outside of Florida the long length and short length logs carry the same rate. I have referred to the gross poundage of those logs shipped over the period 1929 and 1930. There are in the State of Florida and throughout the State of Florida still vast tracts of timber as yet uncut. That applies generally in the northwestern portion of the Peninsula as well as throughout the Peninsula and down the lower part of the Peninsula.

Q. If the Cummer scale could be proven to be fair and reasonably remunerative for the transportation of logs in Florida is there any condition existing throughout the Atlantic Coast Line's system that would justify higher rates than the Cummer (Tes. p. 1019) scale?

Mr. Norman: We object to that question.

A. None that I have been able to find.

Mr. Norman: If the Examiner please, I object to that question. This is a traffic witness. Now he is asking him a transportation question.

Exam. Hoy: Well, traffic and rates I take it. From the rate making standpoint, I was looking at it that way rather than a transportation standpoint. Looking at it that way I think he is qualified to answer it.

A. None that I have been able to find. I have previously referred to the conditions under which logs are transported

between all points on our lines, and there is no condition at any point on our lines that would justify higher rates on logs than those applicable within the state of Florida.

As to what, in my experience with the State Commission [fol. 1032] in the States that our line serves, has been the effect upon intrastate log rates of lower rates existing in the other States; in the instant case the record shows the influence upon the Georgia rates by the intrastate rates in Florida. In South Carolina the State Commission, after having approved our present interstate level of rates, reduced the log rates in South Carolina because specifically the rates in North Carolina are lower than the South Carolina rates then in (Tes. p. 1020) effect. In the case that is now before the North Carolina Commission the existence of rates between points in Virginia on a line other than the Atlantic Coast Line, but operating also in North Carolina, is one of the principal obstacles in the way of securing the application of our uniform scale in North Carolina. As the Interstate Commerce Commission's records will show in every case involving our interstate rates on logs, the existence of lower levels of rates within some of the States that we serve has been urged as a justification for lower interstate rates on logs.

My exhibit No. 63 is a comparison between the Cummer log scale and the log scales now applicable intrastate between points in Virginia, between points in North Carolina, between points in South Carolina, between points in Georgia and between points in Alabama. I have previously referred to the status of the intrastate rates in each of these states and to the efforts that have been made to secure authority to apply uniformly the scale of rates now applicable interstate on our line. The Cummer scale is 48.1 per cent of the Virginia scale; 59 per cent of the North Carolina scale; 52.8 per cent of the South Carolina scale; 56.4 per cent of the transit scale in Georgia; and 45.9 per cent of the Alabama (Tes., p. 1021) scale, which is the same as our [fol. 1033] interstate scale.

By Exam. Hoy:

Q. Just how did you get those percentages?

A. That is a mathematical average of the scale for all of the distances, of course, comparing in the case of Virginia, which has rates only up to 72 miles, comparison

would run against the Cummer scale only up to that distance.

As indicating the impropriety of the Cummer scale in its progression as distances increase I will explain my exhibit No. 64. In my exhibit marked No. 64 is set forth the Cummer scale as contrasted with rates as they would be if made certain percentage of first class rates prescribed by the Interstate Commerce Commission in the Southern Class Rate Case, Docket 13494, 113 I. C. C. 200. There is shown a comparison between the Cummer scale and what the rates would be if made 5.03 per cent of first class rates; 5.03 per cent being the relationship between the log rate under the Cummer scale for five miles, representing the minimum rate of the log scale. Similarly, is shown the comparison with rates as they would be if made 3.54 per cent of first class rates, which is the relationship between the log rates under the Cummer scale for 110 miles, the middle or mean rate of the log scale, and, finally, the comparison between the Cummer scale and log rates that would result from using 3.85 per cent of first class rates, which is the relationship between the maximum rate of the log (Tes. p. 1022) scale and the first class rate for 170 miles. The exhibit is intended to show that as measured by the Commission's scientific progression of the class rates the progressions and the resulting rates under the Cummer scale are irregular and abnormal.

This exhibit, marked No. 65, shows an extension of the [fol. 1034] Cummer scale up to 320 miles. Incidentally, the average haul of all traffic in the United States during the last year was 317 miles. The present Cummer scale for 160 miles is equivalent to 3.4 cents per 100 pounds, this rate having been arrived at by extending the previously existing Cummer scale by adding $1.00 per car for the increased distance of 30 miles over 130 miles. By observing the same progression in distance in 30-mile blocks and by adding $1.50 per car the Cummer scale at 320 miles would be equivalent to 5.2 cents per 100 pounds. The use of the additional $1.50 for each 30 miles increase in distance is in order to be well within the bounds of the effect of a logical extension of the scale, and otherwise the addition for each additional 30 miles of distance might well be $1.00 per car, which was the addition for increase in mileage from 130 miles to 160 miles. The exhibit then shows per

ton mile, per car and per car mile results from the existing Cummer scale and also the extension of the Cummer scale. (Tes. p. 1023) By any system of comparison of per car mile earnings on low-grade heavy loading tonnage elsewhere in the country will be indicated by abnormally low level of the Cummer scale.

I will give some examples indicating the action of the Interstate Commerce Commission in connection with rates producing low per ton mile and per car mile revenue results. In I. & S. Docket 3381, reported in 161 I. C. C. 477, involving rates on sand, gravel and strippings from certain points in Illinois to certain points in Indiana the record shows that the average loading was approximately 53 tons per car and that the Commission found below a reasonable minimum a proposed rate of 65 cents per ton for an average distance of 89 miles, yielding earnings of 7.3 [fol. 1035] mills per ton and 38.7 cents per car mile. Compare these figures with the earnings under the Cummer scale for 89 miles, viz., 5.1 mills per ton mile and 15.3 cents per car mile. In Docket 14573, decided May 17, 1924, involving rates on animal manure from Nevada points over distances ranging from 1141 miles to 2799 miles the Commission found that the rates proposed by complainants would yield revenues ranging from 4 mills to 7.3 mills per ton mile and from 14.8 cents to 21.8 cents per car mile, the average for all groups being 5.78 mills per ton mile and 17.3 cents per car mile, and the Commission, although characterizing animal manure as a low-grade commodity, (Tes. p. 1024) characterized the rates so proposed as less than reasonable. In I. & S. Docket 3251, reported in 156 I. C. C. 575, decided July 18, 1929, dealing with lumber from Pacific Coast points to points in Colorado, New Mexico and Texas reference was made by the Commission to its decision in the matter of rates on sulphur to California terminals, 100 I. C. C. 369, in which it was found that a proposed rate of 40 cents per 100 pounds with a minimum of 80,000 pounds per car for the distances involved, ranging from 1631 miles to 2252 miles, producing ton mile earnings from 3.5 to 4.9 mills and per car mile earnings of from 14.2 to 19.6 cents, was not shown to be reasonably compensatory. In I. C. C. Docket 18984, reported 139 I. C. C. 252, decided January 31, 1928, involving rates on green salted hides, carload, weighing 38,800 pounds per car, from Macon,

Georgia, for a distance of 1144 miles, yielding 18.31 cents per car mile, it was found that the rate sought of 54 cents would obviously be too low. In I. & S. Docket 2800, decided April 16, 1927, involving rates on unmanufactured tobacco from points in Kentucky to St. Louis and East St. Louis for dis- [fol. 1036] tances ranging from 350 to 400 miles, a rate of 35 cents per 100 pounds, yielding car mile earnings of 17.5 cents, was found to be obviously too low, judged by any standard.

In Fourth Section Application 12655, filed by the Seaboard Air Line Railway, seeking Fourth Section relief on paved (Tes. p. 1025) brick from Tennessee, Alabama and Georgia points to Tampa, St. Petersburg, Palmetto, Bradenton and Sarasota, Florida, the Fourth Section relief was denied in an opinion in which it was stated that from Robbins, Tennessee, and Campania, Georgia, to Tampa the proposed rates would yield 4.55 mills and 5.6 mills per ton mile, respectively, and that the per car mile earnings under the proposed rates to Tampa from Robbins and Campania would be 18.23 cents and 22.26 cents respectively; it was also shown that the average operating expenses of the Seaboard Air Line for the year 1923 amounted to 10.3 mills per ton miles and 19.8 cents per car mile for an average haul of 175 miles, while the distances to Tampa were, from Robbins 812, and from Campania 557 miles. As the per ton mile and per car mile revenue under any mileage system of rates must inevitably grow less with increases in distances, a comparison of the revenue returns under the rates covered by the Commission's decisions to which I have just referred, and bearing in mind that most of them are for distances very much greater than those embraced in the Cummer scale, it seems obvious that the rates under the Cummer scale are abnormally low, and, as measured by the rates deal- with by the Commission, are not remunerative.

Mr. Norman: Now if the Examiner please, I want to object to all those citations and decisions of the Commission. If he wants to rely on the decisions of the Commission let [fol. 1037] (Tes. p. 1026) him put them in evidence, where all of the facts are shown. The Supreme Court of the United States held in Robinson versus Baltimore & Ohio 222 United States, that that was the way to introduce a

decision of the Interstate Commerce Commission, was by offering it in evidence.

Mr. Alston: You mean the Interstate Commerce Commission can not take cognizance or call attention to it.

Exam. Hoy: I think he has got the right to refer to the rates as to what the Commission said, of course, what weight will be given the evidence is another thing, but under our practice we are allowed such reference to rates in comparison with other rates to go into the record.

A. My exhibit No. 66 compares the Cummer scale with the iron ore rates involved in I. & S. Docket 1514, reported in 69 I. C. C. 589, found by the Commission to be not justified because unreasonably low. The exhibit shows, among other things, the per car mile revenue under the Cummer scale and similar information under the iron ore rates prohibited by the Commission. The comparison is for the same distances in both cases, and it is readily apparent that the rates condemned by the Commission as too low are very substantially higher than the rates under the Cummer scale (Tes. p. 1027). That was an interstate rate that I referred to as being compared by the Interstate Commerce Commission.

My next exhibit marked No. 67, shows both the Cummer scale and the interstate log scale prescribed in this case as compared with rates prescribed by the Commission on logs in Central territory, from which it is readily apparent how much lower are the Cummer scale and our interstate scale than log rates in Central territory. The exhibit also shows comparison with rates as they would [fol. 1038] be made by using 17.875 per cent of first class in Southern territory, which corresponds with 65 per cent of sixth class in Central territory. Notwithstanding the general practice of lower rates in Central territory than in the South, this exhibit shows to what extent that practice has been departed from in making log rates. I was referring to the present sixth class in Central territory. In other words the exhibit shows the existing lumber rates made 65 per cent of the present sixth class rate (Tes. p. 1028), using the Disque scale. I will next explain my exhibit No. 68 comparing the Cummer scale and our interstate scale with 65 per cent of the lumber rates approved in Southern territory. In I. & S. Docket 2479 the Commission approved a scale of lumber rates to apply between South-

ern points and destinations in Virginia, 157 I. C. C. 280. In this exhibit have been shown the lumber rates so approved, together with the rates made 65 per cent of said lumber rates as compared with log rates under the Cummer scale and under the interstate scale prescribed in this case. The Commission has prescribed on logs 65 per cent of lumber rates in the case of Marvil Package Company, reported 140 I. C. C. 78, applicable from North Carolina and Virginia points to points in Maryland, Delaware and New Jersey, and in Williamson Veneer Company, 171 I. C. C. 687, applicable from points to Virginia to Baltimore. It is readily apparent that the scale prescribed in this case is substantially lower than log rates on basis of 65 per cent of lumber rates and that the Cummer scale is but little more than one-third of the rates made 65 per cent of lumber rates.

I have prepared exhibits showing comparisons between the Cummer scale of rates on logs and rates prescribed by (Tes. p. 1029) the Commission on other low grade traffic for application in the South.

[fol. 1039] There are eight of such exhibits, numbered 69 to 76, inclusive. Each of these exhibits contains not only the rate comparisons, but the other information necessary to use in connection with the comparison of rates such as the loading weights and values, and each of them shows reference to statements made by the Commission with respect to the rates prescribed. The exhibits cover charcoal, cement, old worn-out bags, hay, fertilizer, cullet, brick, sand, gravel, etc. On all of these commodities, except the old-worn-out bags, the rates prescribed by the Commission have general application throughout Southern territory. Without exception the comparison is as to rates, revenue per ton mile and per car mile applicable on commodities on which the Commission, because of low value or because of other considerations stated in the exhibits, has made some very low rates. These exhibits in addition to supplementing the comparisons between the Cummer scale and the rates on other low-grade traffic shown in exhibits filed by me during the previous hearing of this case, are also of particular value in showing the abnormally low level of the Cummer scale in that the rates shown therein were made by the Interstate Commerce Commission. It means

that last line, the rate made on these commodities were by (Tes. p. 1030) the Interstate Commerce Commission.

My last exhibit marked No. 77, is a comparison of the Cummer scale with various scales of log rates approved or prescribed by the Interstate Commerce Commission for application to Chattanooga, Nashville, Mobile and Barbourville. The comparison also runs against the interstate scale prescribed in this case. The comparison not only tends to fully justify the level of our interstate scale, but to show the unusually low level of the Cummer scale.

[fol. 1040] Mr. Alston:

Q. Mr. Examiner, we now tender in evidence the exhibits Mr. Perrin had identified from 54 through 77, both inclusive.

Mr. Norman: Mr. Examiner, I desire to object to the receipt of these exhibits, and I object to exhibits 61 and 62 on the ground that they are addressed to the question of establishing a revenue burden caused by the Florida intrastate rates on interstate commerce, and that that question is not here because of the fact that the complaint simply alleges a violation of Section 3 and 13. As to 13 that states in what respect that violates that provision, and the complainant having offered no evidence except on the question of undue prejudice to shippers and localities (Tes. p. 1031).

As to the other exhibits I object to them because they are addressed solely to the question of the reasonableness of the Florida intrastate rates, a question which the Supreme Court has said is not within the jurisdiction of the Interstate Commerce Commission, and said in this particular case as to these particular rates, that that question is not for the Interstate Commerce Commission.

Mr. Cotterill: And your Honor, to that statement of objections I think should be added as well that if to any extent the evidence is directed to an issue of undue prejudice as between interstate shippers and communities that it is inadmissible certainly at this time because of the absence of any evidence from this or any other witness holding that there is or has been any interstate commerce.

Exam. Hoy: The objections are overruled and the exhibits will be admitted. I think what I previously said will explain why I have overruled the objections.

(The statements were received in evidence and marked "Respondent's Exhibits 54 to 77, inclusive, Witness Perrin") (Tes. p. 1032).

[fol. 1041] A. In Exhibit No. 61 I do not purport to show any interstate movement in so-called long logs between Florida points and Georgia points. I cannot say whether or not there has been any such movement over the Atlantic Coast Line Railroad Company during the period commencing February 9, 1929, to January 31, 1931. As to whether there has been any I don't know. I have not made any inquiry to ascertain. I know that our general office made no inquiry to ascertain whether there had been any such movement. It is a fact that I have compiled here and testified to the extent of our interstate movement over our entire system—our aggregate movement in logs in interstate commerce. I made no attempt to segregate our movement, if any, from Florida to Georgia in the compilation of that aggregate (Tes. p. 1033) interstate movement. I do not know whether there was any movement from Florida to Georgia.

By Mr. Adair:

Q. There was none that you know of?

A. Well, I don't know. Exhibit No. 61 was compiled in my office from data furnished by the Accounting Department. Our Accounting Department compiled the data which included the aggregate movement of logs in interstate commerce over the Atlantic Coast Line Railroad to which I have testified at this hearing, and I mean to say that from that accounting I am unable to testify as to whether there was any movement from Florida to Georgia or not. I mean that. I should perhaps say that it would be a very difficult and laborious thing to segregate interstate traffic, whether it moved from Florida to Georgia, Georgia to Alabama, South Carolina to Georgia, and so forth. In other words not eliminating or segregating interstate traffic, it is a very simple thing to take that in the way-bill (Tes. p. 1034), but if you were to try to do that separately as between the several interstate stations you [fol. 1042] would have an endless job. I compiled the intrastate movement between points in Florida.

Q. Is there any more reason why the interstate movement could not—between points in Florida and Georgia—could not have been compiled?

A. Well, it could have been but every time you try to do that you are merely adding expense of the operation. It was of course a very laborious thing and expensive thing to compile this information in this exhibit 61. As to whether, in compiling this exhibit as intrastate movement, I had to have had examined every way-bill covering the movement of logs from every station on our line in Florida, I did not see any way-bills at all, and as to whether I had to have that done, I don't know now. You are asking about how the Accounting Department went about it. I don't know how they did that. They take it from the way-bills. They had to examine all of the way-bills in order to find out (Tes. p. 1035). It would have been a simple proposition when they had to examine those way-bills anyway to see what if any of them showed a movement from Florida to Georgia, but if you are going to examine every such way-bill separately, you have got some tremendous job on you.

Q. You would not have had to examine it separately. You had to examine all those way-bills anyway to make up this information. I mean you had to have it done, and while it was being done it would have been the most simple matter to have taken out of them any movement from Florida to Georgia, wouldn't it.

A. I could not tell you whether it would or not.

Q. As simple as it was to take a movement from any one [fol. 1043] point in Florida to another point in Florida?

A. You would have to ask the Accounting Department.

Mr. Norman: Well then we ask that they be brought here.

A. Ask Mr. Lamb he will tell you that when he gets on the stand. Yes, he knows all about how it was done.

Q. Was this data prepared under his direction as to that?

A. He is general auditor and knows what is necessary to do it. I could not tell you.

Q. Who was it prepared this, Mr. Perrin?

A. In the Accounting Department, he can tell you who did it (Tes. p. 1036), I don't know. I don't know what officer or employe or employes, I only know the individuals under whose general direction it was done, and that was

Mr. Ingram. Mr. Ingram is not here. I have no available data showing the respective amounts of logs that were moved during either year of this two year period, that is to say, data so that I could show how much moved in the year 1929 and how much in 1930. As to whether that data is available, ask Mr. Lamb. It came to us without separation; now whether it is available in the Accounting Department I do not know. I do not know whether the details of this data are available as to the particular dates of shipment. I do not know who has the work sheets upon and from which this data was compiled (Tes. p. 1037). I imagine Mr. Lamb would know about that.

Q. Upon direct examination as I recall it you said that you saw no reason for higher rates in other states than Florida for the transportation of long logs. I am correct in that am I not?

A. Based upon the question as I recall assuming that the [fol. 1044] Florida rates could be shown to be fair and reasonable rates.

Q. You saw no reason for any difference?

A. No. I said there was no reason why they should be higher, which conversely means that there is no reason why they should be lower in Florida. I testified that in all this movement out of approximately 18,000 cars 10,000 of those cars moved in solid train loads regular movement. I would not say that it is a fact that that is quite an unusual proportion and an unusual movement, and an unusual proportion of an aggregate movement in any state anywhere to go in train loads. I think that is equally true in (Tes. p. 1038) North Carolina, we had trainload movements in North Carolina that constitute perhaps just as great a percentage of the total as these operations in Florida.

Q. As 10 is to 18. Well, is it not a fact though that in North Carolina you have a great many special rates from point to point rates as distinguished from one general rate which alone is applicable to the transportation of logs intrastate in North Carolina?

A. We did have rates per thousand feet but, there is no operation under those rates now in North Carolina. We still have in North Carolina any number of point to point rates, which, however, are not moving any logs. In other words the proposition was to substitute this uniform scale for all point to point rates, or to the present rates for

40,000 pounds as fixed by the State Commission. It is true that substitution has not yet been allowed by the North Carolina Commission but as to these point to point rates that you speak of they are what we call "paper" rates because there is no operation of them. That is true of that trainload movement (Tes. p. 1039). The trainload movement in North Carolina moves under the ordinary local [fol. 1045] rates on the 40,000 pound basis of the State Commission. As to whether I agree with Mr. Price that all published rates are used rates, I imagine there are lots of rates that are never used, rates that are published but not used, of course, that is generally speaking. We always try to eliminate rates that are not used. It is always desirable. This trainload movement in North Carolina of which I speak is I think maybe 20 miles long, either 20 or 25 miles. That movement is between two eastern North Carolina points, I am not quite sure of the region. I think it goes to Washington, North (Tes. p. 1040) Carolina. That movement pays the same rate the same as single carloads of logs pay in general transportation in North Carolina. They have recently endeavored to secure a lower rate there which we could not do; in fact they have recently made arrangement to seek water transportation in view of the fact that we could not give them the rates per 1,000 feet. We are about to lose that movement in North Carolina but we don't lose much. I would say that this is about half of the North Carolina intrastate movement, it is pretty close to it. As to how often they run the trains I am not sure about that.

Q. Mr. Perrin, in the compilation of your data here was that compiled for you or was that compiled so far as you know any data showing the gross—any data showing the revenue for the transportation of logs intrastate between points in Florida during 1925, 1927, or 1928, under the Cummer scale?

A. I didn't catch your point in connection with that statement 61?

Q. No, in connection with the preparation of your data generally, did you prepare any data or memoranda showing the amount of revenue that your railroad received from the transportation (Tes. p. 1041) of logs intrastate between [fol. 1046] points in Florida during 1926, 1927, or 1928?

A. Not that I know of.

Q. We asked your company to prepare and furnish us such data did we not?

A. Certain kinds of data. Do you want me to say why we could not do it? My recollection, while I have not got the record here, the request that you made would have required such a segregation as between the different kinds of logs, as it would have been physically impossible. For one reason, you made a distinction between long length logs, and short length logs. There is no distinction in our other states as between those two characters of logs. There is no interstate between Florida and Georgia.

Q. I think you are mistaken about that. I think there was (Tes. p. 1042) some testimony showing that on the last hearing?

A. On the last hearing, but that is water gone over the dam, since the last hearing, but that distinction is still preserved within the state of Florida. Now, there may have been some other, I don't remember the detail of it, but I think there were some other segregation as being between the kind of logs that our people could not have worked out.

Q. The request was in accordance with the tariff was it not? I mean the Cummer scale and the classification of the Cummer scale. I am talking about the intrastate movement now.

A. No, the request as I recall, perhaps if you have the request it would be better to submit it and then we can tell about the merits of it.

Q. The point I want to know if you had prepared the [fol. 1047] data for the years in respect to the intrastate movement if any, and this movement 1926, 1927 or 1928?

A. No, we had not. It is a fact, known to me, that the Brooks-Scanlon until January—January or February, 1929, was moving trainloads of logs nearly every day from the neighborhood of Perry to Eastport. (Tes. p. 1043). That stopped at or about the time that this new rate went into effect.

Q. Is it not a fact that until a few months before this new rate went into effect the Putnam Lumber Company was moving several trainloads a week from the neighborhood of Perry to Milldale at Jacksonville?

A. The Putnam Lumber Company as I recall announced at the hearing that they were already prepared to move. I think their preparations were already under way. I could not tell you exactly when they did move. I have no idea as to the amount of revenue that we received from the Brooks-Scanlon during the years 1927 and 1928 for the transportation of logs. I could make an estimate by an average basis but I have not got any record of it. It would be a pretty wild guess, (Tes. p. 1044) in respect to the Putnam while they were operating.

By Mr. Norman:

Q. Mr. Perrin, as long as you are on your exhibit 61, we will continue with that. In order to get the matter in the record in precise form I would ask that you have prepared in the same manner that you have prepared exhibit 61, a similar exhibit showing the movement for the same period if any, from various origin points if any in Florida to destinations in Georgia, if there has been, showing the same information which you have shown on your exhibit 61. That is the point of origin, number of cars, the weight and the amount collected. The same detail as is shown on the supporting sheets of that exhibit. That is [fol. 1048] to say as to this interstate movement, if any, all the information shown as to the intrastate movement except the column using the so-called "Cummer" scale. You can show that also if there is any such movement.

Mr. Norman: Now Mr. Examiner, I submit that there is no reason—this is information that is solely within the knowledge of this defendant—there is no reason why it could not be produced with one one-hundredth of the work that has been required to make exhibit 61, and I think it is much more germane to this case than is exhibit 61 (Tes. p. 1045).

Mr. Gwathmey: We expect the information to show that there was no movement.

Mr. Norman: Yes, sir; practically no movement.

By Mr. Gwathmey:

Q. How much of a job would it be to undertake to compile that information.

A. I have no information about it at all.

Mr. Gwathmey: Will you pass that question for the moment.

Exam. Hoy: I would suggest, Mr. Norman, that we pass that until some later time during the hearing, until they can confer amongst themselves and possibly they will be able to get you what you want by tomorrow morning.

Mr. Gwathmey: You want a check made of all the records of those two years to see what movement there was if any, as I understand it.

Exam. Hoy: From Florida to Georgia.

Mr. Norman: To go back over your way-bills that you have been over once.

Exam. Hoy: During this same period of time, about six months.

[fol. 1049] Mr. Gwathmey: You see we have already been over the way-bills once covering shipments between Florida and Georgia.

Mr. Norman: In order that they may consider this other request at the same time I desire to also request that you furnish for the period two years prior to the period for which your exhibit 61 furnishes the information a like statement (Tes. p. 1046) showing the number of cars moving and the amount of freight that you collected during those two years under the rates then in effect.

Exam. Hoy: Is that interstate?

Mr. Norman: Intrastate.

Exam. Hoy: Intrastate in Florida, but not interstate from Florida to Georgia.

Mr. Norman: Yes. The basis for that request, Mr. Examiner, is the Supreme Court said the Commission made no finding as to the revenue which had been derived by the carrier from the traffic in question or which could reasonably be expected under the increased rate, or that the alteration of the intrastate rates was likely to produce additional income, to produce undue burden upon the carriers' interstate revenues and maintain adequate transportation service. In other words if this showing, this evidence of revenue burden is competent at all in order for the Commission to base a decision on it there must be a showing here that they have lost revenue by reason of the change in rates—gained revenue by reason of the change in rates, and that can only be shown——

Exam. Hoy: Well Mr. Norman, don't you think we could pass over that until the defendants report here tomorrow morning as to whether they are going to furnish that.

Mr. Norman: Yes.

[fol. 1050] Exam. Hoy: Then, we will take it up again (Tes. p. 1047).

Mr. Gwathmey: So that we can thoroughly understand this. You are asking now as I understand it for exactly the same data covered by Exhibit 61 for the two years preceding.

Mr. Norman: What I want you to show is what the movement was, and what your revenue was under the Cummer scale, so that we can compare it with what your movement was, and what your revenue was during the two years that the higher scale was in effect.

Exam. Hoy: Well, let us continue with the cross-examination now.

By Mr. Norman:

Q. I don't want to go into detail in it, into these various exhibits but referring to your exhibit No. 67, you recite what the Commission did, not to any other rates, and then make a comparison of rates here involved with what the Commission did in that other case. I will ask you if the Commission did not in that case say that 65 per cent of sixth class resulted in much higher rates than obtained in the South but that other conditions were so wholly different surrounding log traffic in the South than that in the Central Freight Association territory that the comparison was not of any value?

A. I am not aware of that.

Exam. Hoy: You are talking about 67 aren't you Mr. Norman?

Mr. Norman: I said 67 (Tes. p. 1048).

Exam. Hoy: I thought you said 66.

Q. You are equally aware are you not of the circumstances and conditions under which the Commission fixed other rates that you have used here in your comparisons in your exhibits 65 to 67 inclusive?

[fol. 1051] A. Well, I have some familiarity with a great many of these rates that they fixed in the South for general application.

As to trainload movement in North Carolina I did not say that it was about as great as it was in Florida. I said that we have a train load movement in North Carolina that probably represents as great a percentage of the total as the train load movement in Florida. Not the number of cars, but the relationship between the train loads and the less than train loads (Tes. p. 1049).

Q. The movement of logs in Florida intrastate is more than three times as great on the Atlantic Coast Line Railroad than it is in any other state which you serve. The movement of logs in Florida is more than three times as great on the Coast Line in Florida than it is in any other State that the Atlantic Coast Line serves?

A. I would not like to say that offhand. Of course, you appreciate this, and my general impression is that our log business in Florida is approximately 50 per cent of the log business of the system, but the Atlantic Coast Line in Florida has 40 per cent of its entire mileage, and the movement of logs on the Atlantic Coast Line intrastate in all states is about six or seven times the movement interstate in all states. I would not say six or seven but it is certainly a very large proportion of it is intrastate. I gave figures as to the effect of applying the Cummer scale to the movement in the various states and also interstate, and it shows [fol. 1052] that it would reduce our revenues interstate $144,000 whereas in Florida alone it shows that it would reduce it $290,000 and for the intrastate movement (Tes. p. 1050) as a whole about $665,000. That is about right. Our interstate movement on our entire system of logs is about one-eighth of the intrastate movement, approximately that. I have not any information as to how the movement of logs intrastate in Florida was affected by the increase in rates which became effective February 9, 1929. As Freight Traffic Manager of the Atlantic Coast Line Railroad I have no such information, none whatsoever, for this reason; under normal conditions it would be a very simple matter to reach a conclusion about that effect but under the conditions now existing you can not attribute to a rate change any effect upon the movement of logs (Tes. p. 1051). I mean the conditions under which logs are milled today are in a state of more or less stagnation throughout the whole country. The falling off of the logs in Florida in the volume of the log traffic in Florida has

been no greater percentage than in other states that we serve. I have not the figures but I am familiar with the fact that many ordinarily prosperous mills are not operating today under the conditions as they exist. I cannot attribute it to a change in the rates, the variation in the movement of logs; that is a condition that would result whether you changed the rates or not.

Q. Can you, or not, attribute to the change in the rates the loss of the Brooks-Scanlon traffic?

A. I can not attribute to the change in the rates the loss of the traffic. I would say that perhaps they would have stayed (Tes. p. 1052) at Eastport if they had known this rate was going to continue in effect. That is the best I can [fol. 1053] say about that. Now, whether there were other conditions that justified their moving other than the freight rate, of course, I am not prepared to say that.

Q. Well then do I understand you to mean by your statement that in your opinion there has been no greater falling off in Florida than there has in other states, That you do not consider that the increase in the rates which became effective in February, February 9, 1929, affected at all the movement of logs within the State of Florida?

A. I just merely said this. You asked about the absence of information on my part as Freight Traffic Manager of the railroad, and I say that there is nobody could size up the effect of the rate change on the log movement whether or not, or to what extent the logs decreased in movement is comparable to a change in the freight rate, it is impossible to say because regardless of any change in freight rate, we know that the log movement would naturally decline.

Mr. Norman: Mr. Examiner, with the reservation if and when the information we have asked is furnished I would like to further examine this witness, and I am through.

A. As to what kind of a year was the calendar year 1929 in railroad circles, a prosperous (Tes. p. 1053) or an unprosperous year, the first part of it was rather normal but our lack of prosperity began earlier than 1929, and we went steadily down the hill ever since, and it is only within the last few months that we have reached a basis of comparison, that is the two years—or two months during the previous years—that we have been able to make any showing of increased traffic at all.

As to whether I am prepared to say what kind of a year 1929 was in the mill business, or whether 1929 was a good year or a bad year in the saw mill business in this fair [fol. 1054] state, and in Georgia for manufacturers, I do not know about that (Tes. p. 1054). As to logs transported and logs sold in respect to the year 1929 I could not give you any definite figures about it; but there has been a steady decline throughout the years 1929 and 1930 in the saw mill business.

I stated in relating the history of these log rates in the various states of the Southeast that the regulatory bodies of these states had been applied to to fix intrastate rates of the Atlantic Coast Line. As to why we have never applied to the Florida Railroad Commission to provide for them, I think the history of this whole case would indicate that. In the first place for the last five years these rates have been in litigation in the courts and up to that time we operated under a contract that we were maintaining. We could not have gone to the Florida Commission for an increase in rates that we could not take advantage of without violating the contract. As to the attitude of the Florida Commission during the five years of litigation (Tes. p. 1055) towards the Cummer scale, whether it was reasonable or unreasonable, whether they intended to enforce it or not enforce it, I could only judge by the expressions in the record. Chairman Wells criticized the scale as an unreasonable scale.

By Mr. Adair:

Q. May I not inquire that he criticized the reasonableness of the scale under the conditions under which it was operated in the State of Florida?

A. Well, I don't know about the qualifications.

Mr. Adair: I think he made that direct statement.

Mr. Gwathmey: The record will show what he made.

By Mr. Turnbull:

A. Would the fact that you were under contract with some of the shippers prevent the Railroad Commission [fol. 1055] from revising rates in your opinion?

Mr. Alston: I suggest, Mr. Chairman, first that is a question of law; and next because that is a question of contract. Neither the law nor the contract is here.

Exam. Hoy: Well, I do not think Mr. Perrin is qualified to answer the legal effect of the contract.

By Mr. Cotterill:

Q. Mr. Perrin, is the data on which you (Tes. p. 1056) made your notes readily available to compute the revenue effect to your line, if, as to all of the state traffic in other states moving at less rates than your interstate scale, a rate advance should be made to bring them up to that interstate scale, and enable a computation of the revenue advance to the Coast Line if you did have such uniformity of rates and assumed the continuance of the movement?

A. I would have to do that in the same way that I show what the loss would have been under the Cummer scale. In other words merely by a system of percentages in the rates.

You are correct in the recollection that with the exception of the State of Alabama and Virginia there are no general intrastate rates in the states that we serve as high as the interstate rates fixed by the Commission. I said something about North Carolina resisting an advance to that interstate level by reason of comparisons with certain lower rates in Virginia on another line. As far as our line in Virginia is concerned (Tes. p. 1057) we have certain kinds of logs but they are not the ordinary saw mill logs.

Q. Now, you did make a computation which you testified to earlier today as to what would be the revenue effect if the Cummer scale was to be applied to all of your interstate [fol. 1056] and all of your state traffic assuming the continuance of movement as in the past and that indicated a certain total decrease. Does it present a matter of any substantial difficulty to make a like calculation indicating what would be the total revenue increase to the Atlantic Coast Line Railroad system if your entire rate structure were put on the interstate rate level that the Commission in this case has so far indicated to be proper?

A. That is entirely practical. Nor does it present a matter of very great difficulty. It has its infirmities. Just as this approximation as I made here has the infirmity of being more or less a mathematical average.

Q. Considering the comparatively small per cent which your interstate log traffic as a whole bears to your state log traffic as a whole, and considering that except for Alabama,

substantially speaking, all of your state rate structures (Tes. p. 1058) are substantially less than the interstate rate structures the revenue effect of applying this interstate rate scale throughout your system would all be a substantial increase wouldn't it?

A. It would be some yes, but, it would not by any means mean the amount of reduction that the application of the Cummer scale would give us in the way of—I mean it would not mean in the amount of increase in the same proportion as the Cummer scale would produce reductions of revenue.

Q. Now, have you individually, apart from any attitude that counsel may feel in regard to the materiality of it, have you individually any reluctance, at your convenience today or in the morning to making and submitting a calculation such as we have just discussed.

[fol. 1057] Mr. Gwathmey: I think it can be figured from the matter that is already in the record.

Mr. Cotterill: We will have to have certain additional.

The Witness: It will take some little time to do it, but, it is practicable just as we do it in applying the Cummer scale to show the reductions.

Mr. Cotterill: In the absence of objection, your Honor, I should like that calculation to be made, and made available to the record if not today, then in the morning.

Mr. Alston: My objection was not to the form of consent. We are going to answer it fully and fairly in the (Tes. p. 1059) morning. We can do it.

Exam. Hoy: What fully and fairly?

Mr. Alston: As to this calculation that he wants made, and answer that in the morning fully and fairly by giving what he can give.

Mr. Gwathmey: Pardon me before you leave that. Do you intend that information to cover short length logs in Florida?

Mr. Cotterill: No, I think the information as to Florida is already in the record because he has got that computed both ways; there is no need to duplicate that.

By Mr. Cotterill:

Q. Now, one question on an entirely different angle of the matter. Have you abandoned or made application to abandon, or give notice of abandonment of your line into

Eastport where formerly one of your large lumber mill operations existed?

A. No, not that I know of. I think that there are certain uses being made of that line for other purposes although I am not entirely familiar with the situation there. Ordi- [fol. 1058] narily such a policy decision would not be within my jurisdiction. I would not like to try to spot the man in whose jurisdiction it would belong (Tes. p. 1060).

Redirect examination.

By Mr. Alston:

Q. Mr. Perrin, you were asked about the removal of certain of these mills into the woods. Please say whether or not you heard Mr. Fleishel, who is president of the Putnam Lumber Company testify—in regard to moving our tide-water plant to the woods, we do not want any properties on tide-water, we have got them under a very favorable lease, a good deal less than one per cent——

Exam. Hoy: I don't think it is necessary to read the witness' former testimony in a former hearing. Mr. Perrin stated that in reply to some of the gentlemen there that the Putnam Lumber Company had moved, and stated on the previous record that they were going to move.

Mr. Cotterill: And why?

Exam Hoy: And why.

By Mr. Alston:

Q. Now, is that not also true of the Wilson Cypress Company, that F. H. Wilson of the Wilson Cypress Company testified——

Exam. Hoy: As to what he testified?

Mr. Alston: Yes.

Exam Hoy: If it is there, the testimony will show it. I don't think it is necessary to reiterate it to this witness.

Mr. Adair: I will say in passing that is a matter of record. (Tes. p. 1061.)

The Witness: In regard to this matter of the present condition of the lumber industry, my duties as Freight Traffic [fol. 1059] Manager of the Atlantic Coast Line familiarize me with the condition of the industry at least to the extent that it is reflected in the movement of the tonnage of logs

and lumber over our lines. The condition at the present time amounts to something between 35 and 40 per cent of the normal movement. Based upon that data I would say that the lumber business generally is in a depressed condition at this time. There is not anything peculiar to the State of Florida. It is general condition existing generally throughout the system. That condition has been going from bad to worse for the last 18 months. Steadily declining, and is reflected in the present movement (Tes. p. 1062) of both logs and lumber over our lines and in the number of saw mills operating on the line. We have saw mills that for forty years have been prosperous and now are not operating.

Mr. Gutheim: Would you say what you mean by a normal movement when you say the present is 35 or 40 per cent.

A. Yes, instead of earning one million and a half dollars on logs, we should be earning between three and four million dollars on logs. I base that estimate on the movement that took place before the depression set in, for a period of years. That was the ordinary run of our earnings on logs, just the average run of our earnings from year to year.

Recross-examination:

As to whether the lumber industry has been in a severe depression for more than (Tes. p. 1063) five years last past, that depends on what you call severe. I don't think there has been a time in my business life that there has not been some complaint of depression in the lumber business. But [fol. 1060] what I am talking about really is a crisis in the lumber business. I do not mean to say that our revenues from log traffic were three or four million dollars in 1929. I don't know about 1928. I was giving you revenue three to four million dollars a year as our general run over a period of years, if necessary extending into fifteen years. As to when was the last year that we had a revenue on logs as high as that I could not tell you what the earnings on logs were in any year but I do know that the log movement during this (Tes. p. 1064) depression has fallen to be now more than one-third of what it was before the depression set in. I fix the date of the crisis of the depresison as about eighteen months ago. If would be a great deal of trouble for me

to give you our revenue from logs in 1926, 1927, 1928 and 1929.

Mr. Alston: Mr. Examiner, I presume we could pursue the same course as to the exhibits introduced by Mr. Lamb as with reference to the exhibits introduced by Mr. Perrin.

Exam. Hoy: Yes, sir.

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[fol. 1061] GEORGE W. LAMB, called as a witness, being duly sworn testified as follows:

Direct examination.

By Mr. Alston:

A. George W. Lamb, General Auditor, Atlantic Coast Line Railroad Company, with headquarters at Wilmington, North Carolina. I have been connected with railroads, or their interests (Tes. p. 1065) since October, 1900, starting with the Louisville & Nashville Railroad Company, holding among others the positions of Statistician, Second Assistant Comptroller and Senior Assistant Comptroller, up to February, 1918. On March 1, 1918, I was appointed Staff Officer in Charge of Accounts for the Railroad Administration, with headquarters at Atlanta, Georgia, and served in that capacity until February 28, 1920. On March 1, 1920, I returned to the Louisville & Nashville Railroad at Louisville, Kentucky, as Senior Assistant Comptroller and held that position until March 1, 1921, at which time I was appointed General Auditor of the Association of Railway Executives for the purpose of checking the accounts of the American Railway Express Company, and later the Railway Express Agency, for all of the railroads of the country. I held that position until June 1, 1930, at which time I accepted my present position. I am familiar with the issues involved in this case. I have prepared exhibits which I desire to file in connection with this hearing. I will first file as part of my testimony, marked exhibit No. 78, a statement showing the property investment and operating income accounts of the Atlantic Coast Line Railroad (Tes. p. 1066) Company for the calendar years 1926 to 1930, inclusive.

[fol. 1062] It will be noted from line 2 that the increase 1930 over 1926 in investment in road and equipment is

$14,779,000.00, or 5.46 per cent. There was an increase in mileage of 225.89 as shown by line 9, total operating revenues decreased $34,066,560.00, or 35.09 per cent. Of this decrease 31.73 per cent was in the freight account and 50.42 in passenger. As shown by line 15 total operating expenses decreased $21,016,310.00 or 29.73 per cent. Shown by line 29 the net railway operating income decreased from $17,585,807.00 in 1926 to $7,241,304.00 in 1930, a decrease of $10,344,503.00 or 58.82 per cent. As noted by the last line, the return on investment for 1926 was 6.11; 1927, 3.37; 1928, 3.26; 1929, 4.20; and 1930, 2.37 per cent.

I next file as part of my testimony, marked Exhibit No. 79, a similar statement for Atlantic Coast Line Railroad operations within the State of Florida.

The property investment shown on line 2 of this exhibit is based on the tentative valuation as found by the Interstate Commerce Commission, Valuation Section, as of July 1, 1917, to which has been added the actual expenditures for additions and betterments subsequent to that date less retirements.

The tentative valuation of equipment as found by the Commission was brought up to 1926 through actual expenditures (Tes. p. 1067) for additions and betterments, less retirements, and for each year to 1930, and assigned to Florida on the respective equipment mileage percentages. It will be noted that the property investment in Florida in 1930 increased from 1926 as shown by line 2 $6,093,151.00 or 6.89 per cent. The mileage increase 180.92 miles or 9.62 per cent. As shown by line 9 total operating revenue de- [fol. 1063] creased $13,995,704.00 or 46.14 per cent. The decrease in freight revenue being 44.64 per cent, and the decrease in passenger revenue 64.64 per cent. Operating expenses decreased 41.69 per cent.

As shown by line 29, net railway operating income decreased from $5,151,326.78 in 1926 to $1,203,921.65 in 1930 or $3,947,405.13, a decrease of 76.63 per cent, as compared with 58.82 per cent for the entire system, as shown by my previous exhibit. As noted by line 33, the return on investment for 1926 was 5.21 per cent; for 1927 2.28; for 1928 1.85; 1929 2.43; and 1930 1.17. I have prepared statements that would indicate the proportion of total traffic represented by logs (1068). I have prepared and file herewith as part of my testimony marked exhibit No. 80, a statement

showing the logs handled for the system and for the State of Florida, as measured by the number of cars, number of tons and revenue for the system for the years 1926 to 1930, both inclusive. The revenue derived from handling logs is not available for the State of Florida and I have, therefore, only been able to show the number of cars and the number of tons for the State. It will be noted for the system that logs represent approximately 7 per cent of the total traffic, as measured either by cars or by tons, and for the three years 1928, 1929 and 1930, 1.6 per cent of the system revenue. In the State of Florida logs represent 7.3 per cent for the average of the five years of total traffic shown as measured by cars and tons. It will be noted that the range has been, as shown by column 10 from 9.6 per cent in 1927 to 3.6 per cent in 1930.

[fol. 1064] Columns 11 and 12 show the ratio of cars and tons handled in Florida to the system, from which it will be noted that in 1928 the number of cars of logs represented 52.35 per cent of the system and the tons 57.26 per cent. This percentage has decreased in 1929 and 1930, 1930 being 35.43 per cent as measured by cars and 40.76 per cent based on tons handled. Attention is directed to the foot note relative to the years 1926-1927, for which years the classification includes posts, poles and cordwood. In 1926 for example logs as expressed in tons represented 8 per (Tes. p. 1069) cent of the total traffic of the Atlantic Coast Line, whereas in 1930 it represented only 3.6 per cent. I show that in column 10. In column 5 for 1928. That 7 per cent is the ratio of logs as measured by tons to total traffic for the entire system. My 9.4 in column 10 is the ratio of logs to total traffic for Florida, as measured by ton or as measured by cars, of the total traffic in Florida I misunderstood your question a moment ago. It is the ratio of logs to the total traffic in Florida. In column 4, 5, and 6 are the ratios of the logs to the total system traffic. Going over to column 11 (Tes. p. 1070) where the 52.35 per cent, under the column ratio of Florida to system tons, that means that that is the ratio of Florida logs as measured by the cars to the system, as to cars of logs in the whole system: for example in 1928 we handled 51,801 cars of logs on the system and 27,119 cars in Florida. Under column 12 the corresponding figure 57.26 per cent means the same thing expressed in tons.

Mr. Norman: I do not know that I understand that but, if I understand it correctly it means of the Florida log traffic in 1929 and 1930 fell off considerably more than [fol. 1065] the general log traffic of *of* the system.

Exam. Hoy: No, wait a minute Mr. Norman. Column 4, 5 and 6 of the ratio of the log traffic on the system to the total traffic on the system.

Mr. Cotterill: On all commodities.

Exam. Hoy: On all commodities. Now, column 9 and 10 are the ratios of the log movement in Florida to the total movement of all commodities in Florida.

The Witness: That is correct.

Exam. Hoy: And column 11 and 12 are the ratio of the Florida logs to the system logs (Tes. p. 1071).

Mr. Norman: So that in 1929 and 1930 the Florida logs fell off a great deal more than the system logs, gives a much smaller percentage of the system than in previous years.

The Witness: The system logs is measured by tons in 1930, decreased to 4 per cent from 7 per cent in 1928, while as measured by tons in Florida 1930 was 40.76 per cent as decreased from 57.26 per cent.

By Mr. Norman:

Q. So that it is true that the Florida log traffic fell off in 1929 and 1930 more than the general log traffic of the Atlantic Coast Line Railroad?

A. Well, it is as expressed in percentage in the ratio to the system, that is true.

Mr. Norman: Mr. Perrin said that was not true.

By Mr. Turnbull:

Q. It is also true is it not in respect to the relative number of cars?

A. As shown by column 11.

Q. As shown by column 12?

A. The general decrease I would attribute largely to the [fol. 1066] bursting of the bubble in Florida when the building had ceased, and the general stagnation in business in the South as well as all other sections of the country. I have prepared a statement comparing the freight revenue, Account 101, and revenue tons between Florida and the Sys-

tem, excluding Florida, and now file as part of my testimony marked (Tes. p. 1072) exhibit No. 81 a statement showing for the entire system excluding Florida for the years 1926-1930, the total revenue subdivided between intrastate and interstate traffic, and similar information for the State of Florida. In the center of the exhibit will be noted the percentage of decrease as compared with the year 1926, and in the last column similar percentages for the State of Florida. Taking the year 1927 as compared with the year 1926 it will be noted that the decrease in interstate traffic, Florida, was 26.75 per cent as compared with 9.15 per cent for the system, excluding Florida. There was a decrease in intrastate revenue, Florida, of 24.55 per cent compared with a decrease of 2.65 per cent intrastate revenue for the system, excluding Florida. These percentages gradually increased, and in 1930 the decrease in intrastate revenue for Florida compared with 1926 was 52.88 per cent. A decrease in interstate revenue of 37.13 per cent as compared with the interstate revenue for the system, excluding Florida, of 25.57 per cent and 26.38 per cent for intrastate traffic.

[fol. 1067] At the bottom part of the statement there is shown the revenue tons handled interstate and intrastate. It will be noted that in 1930 the decrease in revenue tons intrastate, Florida, as shown in the last column, as compared with the revenue tons of 1926, was 56.66 per cent and the decrease in interstate revenue tons 40.99 per cent, as compared with the (Tes. p. 1073) system decrease in revenue tons of 24.85 per cent on intrastate and 31.34 per cent on interstate traffic. This exhibit shows that there is a general decrease over the entire system excluding Florida as well as in Florida, and a more pronounced decrease in Florida than on the system. As to how we determine our Florida interstate traffic, that is either interstate originated in the State of Florida and passing out into other states or vice versa, or there is no trans-state movement to speak of in Florida. Cuban traffic would be interstate if there is a movement. In your State of Florida your Cuban movement, so far as the railroad is concerned would be intrastate movement. So far as the Atlantic Coast Line statistics are concerned it is treated as intrastate movement entirely within the State of Florida. If it was moving interstate originating in Florida and moved

north through the other states it naturally would be counted as a ton in Florida as interstate and a ton on the (Tes. p. 1074) system. First let me clear this up. I wanted to be sure the Examiner understood this. This had reference to the total revenue and not to the log revenue; my entire exhibit No. 81. There is no duplication so far as the revenue is concerned. If it is an interstate movement there is credited to Florida its mileage proportion of the interstate movement, and the revenue on that particular shipment if it moves entirely within the State it is all [fol. 1068] credited to Florida as intrastate.

By Mr. Pettijohn:

Q. Mr. Lamb, insofar as the heading entire system excluding Florida, is concerned, that applies only to the revenue statement; it does not apply to the revenue general statement?

A. You mean by that, the duplication of tons?

Q. Is that in this statement?

A. A ton that was handled as interstate in Florida may also (Tes. p. 1075) be counted as a ton interstate on the system, excluding Florida, but an intrastate ton in Florida is counted in Florida only.

By Mr. Cotterill:

Q. Now, since we got into the interruption, so as to understand it as we go along. There is one thing you said, injected for the first time, that is confusing to my mind, and that is in respect to revenue. I had an impression from something you said that in the case of Cuban business originating in the State of Florida you would treat that as intrastate revenue?

A. Because we would treat it as a movement entirely within the State of Florida originating and terminating in Florida.

Q. Now, if you received some business from another carrier at a junction point in Florida and it terminated on your line in Florida, how does your revenue calculation here treat that, as state or interstate?

A. If it was an interstate movement received from another carrier delivered to us at some junction point in

Florida it would be treated as interstate movement. Regardless of our own haul being within the state, yes, the nature of the movement. The point of origin and destination of the movement controls the determination as to whether it is intrastate or interstate, and I determine that [fol. 1069] from an examination of our billing (Tes. p. 1076) in each case. As to your question, whether that applies as to all commodities, that may lead to something else. In determining this we did not consider it as between interstate and intrastate by commodities. You say as to all commodities you mean as a whole? And, I want to clearly understand your question.

Q. You had to examine the billing of all commodities to find the origin and destination; to determine whether it was state or interstate, and in connection therewith you made such examination of billling as would have included interstate shipments of logs, if there had been any, that billing would have been in the examination?

A. Of course, in preparing our statistics for the separation between interstate and intrastate, we necessarily have to handle every bill, but we do not in that operation take any division as to commodity revenue. That is the basis of our settlement with connections. I have made a study of the density of traffic in Southern Florida as compared with (Tes. p. 1077) northern part of Florida and now file as part of my testimony marked exhibit No. 82 a statement showing the density of traffic for the northern part of Florida compared with the southern part of Florida for the calendar year 1927. Note 1 describes northern Florida as being all points north of the Jacksonville-River Junction Line of the Seaboard and the River Junction-Pensacola Line of the Louisville & Nashville Railroad. Southern Florida being all points south of the aforesaid line. This statement was prepared and issued by the Interstate Commerce Commission in 1928, based on replies to the order of the Commission dated November 22, 1927, to Class [fol. 1070] I roads. Insofar as I am advised this is the only case where the traffic has been divided as between northern Florida and southern Florida, and could only be compiled through special studies made in answer to questionnaires prepared by the Commission. The statement is largely self-explanatory, but I call particular attention to line 9 under Revenue Passenger Miles, which shows the average

per mile of road operated in Southern Florida was 70.13 per cent of northern Florida. Under Revenue Ton Miles, as shown by line 13, southern Florida was 90.57 per cent of the average revenue tons per mile of road operated in northern Florida.

The purposes of this exhibit will be shown later on (Tes. p. 1078) in my testimony, when I undertake to show the relatively higher costs on the third division of the Atlantic Coast Line Railroad as compared with the system, the third division being relatively the same district as that embraced in southern Florida. I next file as part of my testimony marked exhibit No. 83 2 sheets, a statement showing the traffic density statistics, State of Florida compared with the system, excluding Florida, calendar years 1921-1930, inclusive, for Atlantic Coast Line Railroad. Take the year 1929 for illustrative purposes, it will be noted column 4 that the miles of road operated in Florida were 2,055.40 and those operated on the balance of the system, excluding Florida were 3,096.20, column 10 the mileage in Florida representing 66.44 per cent of the system mileage, excluding Florida. Yet, the tons one mile in the State of Florida represented only 33.4 per cent of the system excluding Florida. The ton miles per mile of road for the State of Florida were 400,002 as shown in column 6; for the system, excluding Florida, as shown in column 12, were 794.- [fol. 1071] 395. The tons one-mile per mile of road in Florida represented 50.4 per cent of those of the system, excluding Florida.

For 1930, with 66.6 per cent of the system mileage, column 13, excluding Florida, the tons one-mile, of revenue (Tes. p. 1079) freight in Florida, produced only 38 per cent of the system, excluding Florida, and the tons one-mile per mile of road in Florida for 1930 were 369,979, column 6 compared with 648,395 for the system, excluding Florida column 12; the tons one-mile per mile of road in Florida being only 57 per cent of those of the system, excluding Florida. These figures indicate the low density of traffic in Florida as compared with the system of the Coast Line outside of Florida. Sheet 2 of this exhibit shows similar information for the Seaboard Air Line Railway Company; and again taking the year 1929 as illustrative, the percentage of Florida operated mileage to the system was 40.86 per cent. But as shown in the next col-

umn the percentage of revenue ton miles in Florida to the system was only 26.55 per cent. As shown by the third from the last column for 1929 the percentage of Florida mileage operated to the system, excluding Florida, was 69.10; while the percentage of Florida ton miles to the system, excluding Florida was only 36.10 per cent and as shown in the last column the percentage of tons one-mile per mile of road, Florida to system, excluding Florida, was 52.24 per cent. I have attempted to develop whether or not the cost of operation in Florida was really greater than the cost on other parts of the Atlantic Coast Line. (Tes. p. 1080). And from this study it would appear that the cost on the third division, which operates exclusively [fol. 1072] in the State of Florida, is considerably higher per unit than the cost on the first and second divisions operated north of Jacksonville. I base this statement on an analysis made showing certain "out-of-pocket" expenses in Florida, for the third division, as compared with similar expenses on the first and second divisions. The accounts selected were as follows:

392.—Road Engiuemen.
394.—Road Locomotives—Fuel.
397.—Road Locomotives—Water.
398.—Road Locomotives—Lubrication.
399.—Road Locomotives—Supplies.
400.—Engine House Expenses—Road.
401.—Road Trainmen.
402.—Train Supplies and expenses.

This analysis was made for the twelve-month period July 1, 1928, to June 30, 1929, inclusive. The costs for these "out-of-pocket" expenses for the third division and for the first and second divisions, respectively, were as follows:

| | Cost per freight-car-mile loaded and empty |
|---|---|
| Third Division | 2.95176 cents |
| First and Second Divisions | 1.717496 cents |
| | (Tes. p. 1081) |

Ratio of Third Division to First and Second Divisions, 171.85 per cent.

Those were loaded and empty car miles. I have not the percentages of those loaded to empties in the respective

divisions because I was taking the total cost of loaded and empty cars as a total for these divisions.

[fol. 1073] Q. What I mean to say is Mr. Lamb, before you could use as a divisor the loaded and empty car mileage, you had to put the loaded and empty together, so that they were separate at one time in your notes?

A. Possibly I have those figures with me, if I have I will be very glad to furnish them to you, Mr. Cotterill. I think perhaps we have, though my assistants in putting those figures together may not have furnished me with the basic figures, but if I have not got them here if I am able to get them I will be glad to furnish them to you. Cost per thousand gross ton miles, Third Division 88.288 cents; First and Second Divisions 53.26312 cents; Ratio of Third Division to First and Second Divisions 155.62 per cent. These comparisons clearly demonstrate the difference in the cost of operation in the State of Florida, where the (Tes. p. 1082) density of traffic is low, as compared with the balance of the system having a much higher density of traffic. Exhibits previously filed by me indicate the considerable difference in the traffic density of the State of Florida as compared with the balance of the system excluding Florida. The above "out-of-pocket" costs were developed from an actual analysis of vouchers, payrolls, material and supply issues, etc., for each of the months, July 1, 1928, to June 30, 1929, both inclusive. I have made an attempt to determine the cost of handling logs in Florida. It is, in my opinion, impossible to determine with absolute accuracy the cost of handling any one commodity, but I have attempted to develop certain costs which, while not presented as being the actual cost, will at least afford a figure showing the average cost on the third division, which is operated exclusively in the State of Florida. I had the accounts of the third division analyzed, as just [fol. 1074] explained, to develop the "out-of-pocket costs" that is, those accounts which we can definitely assign to the freight service without question. From these figures I developed the cost per gross ton-mile, and per car mile. I then eliminated from the total freight operating expenses of the system all Yard-Accounts-Freight, and certain other accounts (Tes. p. 1083). Due to lack of time I have not been able to segregate certain accounts to that part attributable to this particular service and that part not

applicable. In these cases I have eliminated the entire account although a portion of the charges should be borne by this traffic. For example, station employees in the transportation block of expenses, Account 373, shows charges to Freight of $3,281,352.00. There is no question but what a portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services; but this entire amount was eliminated. These are total system figures for the time being, and I am going to file a study now that will explain it. I will, at this time, file as part of my testimony marked exhibit No. 84, 2 sheets, a statement giving in detail the accounts and amounts eliminated from the freight operating expenses of the Atlantic Coast Line system. This statement also shows for the system the same "out-of-pocket" accounts used in developing on the third division the same (Tes. p. 1084) "out-of-pocket" expenses per gross ton mile and per car mile. The statement also shows the relation of these "out-of-pocket" expenses to what may be deemed the haulage expenses remaining in the accounts after the elimination of the various accounts listed on the statement. These accounts represent [fol. 1075] 35.027 per cent of the total haulage accounts. You will notice down below the middle heading "out-of-pocket" expenses on the second sheet. That is where I had drawn a line. The total of your accounts is $6,920,684. That is the total of those "out-of-pocket" accounts for the system. The total operating expenses are shown just under the words "grand total eliminated". Do you catch that, about the middle of the page? Total operating expenses, freight. Now, you will notice I have shown above that grand total eliminated $9,629,744, leaving total haulage expenses $26,679,069. Did you get that figure? The eliminated amount was subtracted from the total of operating expenses (Tes. p. 1085) freight. Leaving in $26,679,069.00, which may be termed substantial haulage expenses because I have eliminated as you will note from page 1 $4,550,039.00 for yard accounts from yard accounts in our freight operating expenses has been eliminated and then at the top of page 2 I show certain other accounts which have been eliminated aggregating $4,665,938.00 among which you will

note is account 373, Station Materials, and $3,281,352.20, regarding which I have just made some comments.

Q. Now that is perfectly clear up to the point, where you have been discussing the elimination from your system of operating expenses. But, where the point of confusion now lies is we come back to this "out-of-pocket" expenses; it is important to know whether the block of items immediately under that concern your system expenses or the third division only?

A. I testified in the first part of this testimony regarding this exhibit, that those were the system figures. The $6,920,684 under the heading "out-of-pocket" expenses [fol. 1076] are system figures charged to these freight accounts. Now, I have eliminated from the total operating expense, freight, as shown in the center reading $36,308,813.00 the item tabulated above of $9,629,744. Leaving $26,679,069.00. The $6,920,684.00 out-of-pocket (Tes. p. 1086) expenses are 25.9405 per cent of the $26,000,000 opposite the line total haulage expenses used. That comparison will later be used by me in subsequent exhibits. In other words that is the relation of out-of-pocket expenses to the system accounts, Freight, as represented by what I have termed here "haulage" expenses of twenty-six million dollars. That is after I have eliminated all yard expenses and these other items tabulated on page 2 of my exhibit, the remainder in the freight operating expenses were twenty-six million odd dollars and the out-of-pocket expense bear the relation of 25.9405 per cent to the twenty-six million odd dollars haulage expenses. I selected those particular items out of the total of all operating expenses for the purpose of describing them as out of pocket expenses.

Q. They are the ones included in the total, bound to be. You have got a duplication right in there?

A. Oh no. I want to get this clear. I want you to understand it because if you (Tes. p. 1087) don't understand this you won't understand the subsequent exhibit. Let me see if I can make it plain to you. Total operating expenses, freight $36,308,813 includes the items that I have got under out-of-pocket expenses which total $6,920,684. I selected that from a block of items which I call "out-of-pocket" expenses. I simply selected this out of the total and then I have made a computation of percentage which

they bear to that total, which I used in certain others, fo
[fol. 1077] later purposes. The idea is this, I want you t
clearly understand it Mr. Cotterill. I have here twenty
six million dollars of haulage expenses, and these account
are out-of-pocket expenses which are included in the per
centage relation of 25.940 per cent (Tes. p. 1088). Now, i
a later calculation I will have the cost per gross ton mil
as measured by the simply out-of-pocket expenses fro
the third division, and I will then apply this percentag
to bring the same equivalent accounts into that cost. Nov
possibly the last paragraph is now clearly understood a
to determine the proportion of general expenses. In orde
that there may be a clearer understanding of the grou
of figures at the bottom of the page you will note that th
tabulated accounts that are eliminated aggregated $9,215,
975. At the bottom of page I show total operating expenses
freight, $36,308,813. Immediately under that total genera
expenses $1,560,125. Then, total expenses less general ex
penses $34,748,687.00. The relation or the percentage o
general expenses to this total excluding general expense
is 4.4897 per cent. In order to also bring out and eliminat
a relative proportion of general expenses I have applie
that per cent $9,215,975 of the account eliminated and as
signed $413,769.00 as general expenses attributable to ac
counts eliminated.

Mr. Pettijohn: Before you adjourn, I would like to hav
him give, if you know, the expenses shown for the syste
(Tes. p. 1089) to correspond with the out-of-pocket ex
penses shown for the system. In other words I understoo
your testimony awhile ago to say that you deduced certai
average costs per ton mile and per car mile from th
eliminated expenses to the third district?

[fol. 1078] A. Yes, sir.

Q. Will you mind filing in the morning for us sometim
an itemized statement to conform to those statistics?

A. I will be glad to. I, of course, have those figures.

Mr. Alston: I understand you mean the out-of-pocke
expenses.

Mr. Pettijohn: To complete column 402.

The Witness: I understand it. (Tes. p. 1090)

June 11, 1931.

Further direct examination:

Mr. Alston: Mr. Examiner, on last night we found that there were some errors in the calculations in some of our exhibits and it becomes necessary to ask our brethren to whom we distributed the exhibits including the second sheet of 84 and the ones after that. Let us have those back. Mr. Lamb, please turn to the second sheet of exhibit No. 84 and state whether or not there is any correction you desire to make on that sheet, and if so state the correction.

A. On the second sheet of 84 in the center of the page under the title "haulage expenses used," $26,679,069.00 deduct from that figure $6,920,684.00 being the out-of-pocket expenses for the system tabulated just below. The remainder after that deduction should be $19,758,385. Down near the bottom of the statement where it says "ratio to haulage expenses used," the figures now appear as 25.94, change that to 35.027. Those are all of the changes. That is because I computed that (Tes. p. 1091) ratio not to the total haulage expenses but the total haulage expenses less the out-of-pocket expenses. I then used that factor 35.027 [fol. 1079] in the remainder of the sheets that you now have to turn to. That is my purpose, to use that percentage.

Q. Did you do so, or are you now going to change all of the figures shown in those other sheets that were returned to you so as to use the 35. ratio?

A. That was the necessity for making that change to apply these percentages. I next file as part of my testimony marked exhibit No. 85 a statement showing the method of assigning taxes and return on investment. This statement shows the total taxes paid by the Atlantic Coast Line Railroad for the year 1929. Under the percentage column near the middle of the sheet will be noted 3.00985 per cent. This is the relation of the corporate income taxes paid to the net revenue from railway operation, as shown (Tes. p. 1092) just on the left of those percentages; for example net revenue from railway operations were 18,940,000 odd dollars, and the income tax $570,075,77 the relation being approximately 3 per cent. The next percentage 15.3950 is the relation of Florida taxes to total operating expenses in the State of Florida; that is, the total operating expenses $13,739,933.00 and the taxes

$2,115,260.76; the relation of percentage being .15.3950. At the bottom of the exhibit is shown the 5-¾ per cent return on investment for the system on property investment as of December 31, 1929, which is drawn from my exhibit No. 78. The total operating expenses are from our annual report to the Interstate Commerce Commission. The amount assignable to freight is also drawn from line 247, page 309, column (c) and column (e) of the report to the Commission. Line 4 shows the percentage of the freight expenses the total operating expenses as 67.95 per cent. Line 5 shows the 5-¾ per cent return on investment, I [fol. 1080] mean $17,620,257.00, and line 6 shows the freight proportion based on the divisions of operating expenses as between the freight service and passenger service. Line 7 shows the ratio to the freight operating expenses of the freight proportion of 5-¾ per cent return on investment as 32.97536 per cent.

Q. Mr. Lamb will you please explain the theory on which this No. 86 is made, and you have these exhibits set up in two ways, to exemplify two methods. Will you please explain to (Tes. p. 1093) the Examiner the difference between the two methods and just what exhibits illustrate one method and what exhibits illustrate the other method.

A. I next file as part of my testimony, marked exhibit No. 86 a statement showing the estimated cost of handling logs in Florida based on out-of-pocket expenses actually assigned to the third division of the Atlantic Coast Line Railroad Company operating entirely within the State of Florida, raised to 100 per cent of the haulage expenses, freight, as indicated. This exhibit shows the average haul of the log traffic based on 18,602 cars handled from February 9, 1929 to January 31, 1931 to be 81.36 miles. That is the weighted average. It will be noted that in the two columns headed (a) and (b), line 9, shows out-of-pocket expenses per gross ton mile as .08828 plus. This is the actual out-of-pocket expense developed on the third division, and on column (a) line 10 has been raised to 100 per cent per haulage cost by dividing it by 35.027 per cent.

Exam. Hoy: The exhibits show 25.

Mr. Cotterill: Should be 35.

By Mr. Cotterill:

Q. It was 25 in your previous sheets, ~~~~~ [fol. 1081] A. It ought to be 35.027—by dividing it by 35.027 per cent.

By Mr. Pettijohn:

Q. Do you mean to say by dividing the .088 (.08828 plus) under column (b) on line 9 by 35 (35.027) (Tes. p. 1094) column (a) on line 10 that you will get 37?

A. No, that you get 25.2059, as shown in column (a) and line 10; the 35.027 per cent being the ratio of the out-of-pocket expenses to the total freight haulage expenses shown on my exhibit No. 84. Column (b) line 10 shows the figures on line 9 raised to 100 per cent as representing the total operating expenses, freight, excluding hired equipment. In other words the out-of-pocket accounts represented on line 9 for the system were found to represent 23.549 per cent of the total freight operating expenses. Attention is here called to the fact that the figures shown in column (a) are haulage costs and do not include any terminal hire of equipment or agency expenses whatever. The figures in column (b) include a relative proportion of all freight operating costs excepting hire equipment. By dividing the figures on line 9 by 23.549 and multiplying the result by 100 we produce the total cost per gross ton mile, column (b) line 10, .374912. The average revenue of $15.12 per car was obtained by dividing 18,602 cars into the total revenue of $281,225.75 under the so-called Cummer scale. Those figures were obtained from Mr. Perrin's exhibit, I do not recall the number. The average weight per car as billed was 56,754 pounds, as entered on line 3. However the tare weight per car used on this service is 33,000 pounds (Tes. p. 1095), as shown on line 4. Line 5 adds the average tare weight to cover the empty haul of the car on the return movement; adding lines 3, 4, and 5 gives us on line 6 the [fol. 1082] gross weight in pounds, 122,754, and dividing the total by 2,000 pounds we obtain on line 7 the gross tons of 61.377. Then, multiplying these figures by 81.36 miles shown on line 1 we obtain the gross ton miles of 4,994 entered opposite line 8. The figures on line 14, showing the operating costs, are obtained by multiplying the gross ton miles by the figures on line 10. Deducting the operating costs shown on line 11 column (a) $12.59 from the reve-

nue per car $15.12 shown opposite line 2, we obtained the net of $2.53, to which has been applied the percentage shown on line 12 to assign a proportion of the income taxes—8 cents in this case. Line 13 is obtained by multiplying the cost shown on line 11 by 15.3950 per cent to assign the Florida taxes, $1.93. The sum of lines 11, 12 and 13 are entered on line 14, which gives the total operating expenses and taxes for haulage expense as $14.60. Line 15 assigns a proportion of the 5¾ per cent return on investment by multiplying the cost on line 11, $12.59 by 30.4443, being the relation of 5¾ per cent return assignable to the total freight operating expenses as indicated at the bottom of exhibit 85 (Tes. p. 1096). The 32.97536. The entry on line 15, $4.15 added to line 14 give a total haulage cost, including return on investment line 16, of $18.75. The figures in column (b) were obtained in the same manner showing what the cost would be if all freight operating expenses were used in the calculation, namely, $27.77, but these figures do not include any hire of equipment. As previously stated it is in my opinion impossible to ascertain with absolute accuracy the cost of handling any one commodity. However, we have here results of two studies, the operating expenses included [fol. 1083] in column (a) being confined to haulage costs, no terminal or enginemen expense, or hire of equipment, being included therein; while there is included in column (b) a relative proportion of all expenses excepting hire of equipment. The costs shown in column (a) are unquestionably too low, while the costs shown in column (b) include some items of expenses which it might be claimed are not directly assignable to log traffic. Now, even if it were possible to obtain the actual cost of handling these logs the figures arrived at would more nearly approximate column (b) than column (a) (Tes. p. 1097). On the bottom of the exhibit note B, reference is made to percentage of 23.5492. This represents the relation of total freight operating expenses less the out-of-pocket expenses to the freight operating expenses of the system. Perhaps to make it clearer. The total operating expenses, freight, were $36,308,813.00. The out-of-pocket expenses shown on my exhibit 84 were $6,920,684.00. Deducting these figures leaves $29,388,129.00. Dividing this latter figure into the out-of-pocket expenses $6,920,684.00 gives you 23.5492. Item 1, is a weighted average of all the individual shipments shown on Mr.

Perrin's exhibit 61. The average revenue is produced in the same way by Mr. Perrin's exhibit 61. I think I explained a moment ago that the average revenue of $15.12 per car was obtained by dividing the 18,602 cars into $281,225.75. My average billing weight is also obtained from that same exhibit. The tare weight (Tes. p. 1098) I obtained from our car accountant, and the rest of those figures when you come down to 7 and 8 are merely arithmetical calculations from 3, 4, 5, and 6.

[fol. 1084] Q. And, from 8 or at 8 you stop so far as the per car results of actual business are concerned, and then you go on to cost calculations?

A. I produced in the center of exhibit No. 86 the basic data from which the computation made from lines 10 to 16 are derived.

Q. Now, where do you get this item 9, out-of-pocket expenses per gross ton mile, .0882888 cents?

A. That figure was derived from the study of out-of-pocket expenses from the third division.

Q. Where is that shown here?

A. I mentioned that in my testimony leading up to the filing of these exhibits yesterday.

Q. Yes, but are those figures shown in your exhibits, or if not are there any published documents from which we can obtain those same figures?

A. No; there are no published documents because it is necessary to analyze the accounts as I go of each of these methods covered in order to produce the figures. Yesterday Mr. Pettijohn asked me to furnish the third division figures (Tes. p. 1099) for these accounts. I would be glad to put them in the record at this time.

Q. Well, it strikes me that in order to check these results we have got to have that in entire detail?

A. You cannot do that unless you take every voucher to check the item, which you will have to do as I do it. I had it done under my direction—took every payroll and every voucher handled on the third division, which was analyzed and the expenses attributable to the third division developed from that source.

[fol. 1085] Q. But you can as a result of that study make a tabulation showing the total operating expenses for the system by classifications and the total operating expenses attributable to the third division for the same classifications can you not?

A. Just for the out-of-pocket expenses. In other words our total operating expenses are not distributed to divisions, they are assigned to the system as a whole concurrently. In order to get the expenses for the third division it was necessary for me to analyze all of the vouchers affecting the third division.

By Mr. Cotterill:

Q. And to make an allocation as between the third division and the other two?

A. Not allocation because practically all of the out-of-pocket expenses are direct. There are some few items which (Tes. p. 1100) of course are assigned necessarily.

Q. Common to all divisions?

A. Very few of them, though.

By Mr. Pettijohn:

Q. Mr. Lamb I believe what is wanted is simply the primary expenses and the gross ton miles on the third division which you used to determine the average gross ton mile costs?

A. I will be glad to give you that. The gross ton mile figures you want?

Q. We want the statistics from which the .088 was determined?

A. All right. The out-of-pocket expenses of the third division for the period July 1, 1928 to June 30, 1929, were as follows:

| | |
|---|---|
| [fol. 1086] Account 392, Road Enginemen | $497,364.58 |
| Account 394, Road Locomotive—Fuel | 606,920.94 |
| Account 397, Road Locomotive—Water | 28,406.12 |
| Account 398, Road Locomotive—Lubricants | 15,379.52 |
| Account 399, Road Locomotive—Supplies | 9,575.70 |
| Account 400, Engine-house Expenses, Road | 126,854.35 |
| Account 401, Road Trainmen | 637,337.05 |
| Account 402, Train Supplies & Expenses | 127,772.40 |
| Total | 2,0[illegible]10.66 |

The total loaded and empty car miles were 69,775,673. The gross ton miles in thousands would then be 2,332,81[illegible]. The gross ton miles (Tes. p. 1101) were furnished by our car accountant, Mr. Dewey.

Mr. Cotterill: I do not se how we can progress very far in the cost analysis when so much of the information is drawn from so much undisclosed, unrecorded sources, and we are asked to sit here and make pencil notes of a lot of figures which are basic to the whole study.

By Mr. Pettijohn:

Q. Well, might I ask you to define what the third division is; that is its junction points in connection with the second district?

A. The third division is from Jacksonville and south, from High Springs and south, and from Fincher to Thomasville, Georgia 7 miles in Georgia, that is, from Thomasville south 7 miles in Georgia.

Q. Now, will you in order to give us opportunity to study this question also furnish us the formula which you followed in assigning water, lubricants, enginehouse supplies, enginehouse expenses, and train supplies and expenses to districts or, did you simply take the places at which those [fol. 1087] supplies were incurred and assign them direct to the study?

A. I suspect the best way to explain it is to take each account separately. I will be very glad to explain each account as we go through here. In order to develop the out-of-pocket cost on the third division—I will show you that (Tes. p. 1102). The third division includes all of Florida, south of Jacksonville, and from High Springs to the south, and then Fincher to Thomasville, all south of there. It does not include Florida north of High Springs. In order to develop the actual out-of-pocket costs on the third division, I had an analysis made of vouchers, payrolls, materials and supplies, etc., for each of the months July 1, 1928, to June 30, 1929. The figures were drawn from the actual vouchers and payrolls of the third division. For example, Account 392—Train Enginemen. The amounts chargeable were drawn from the payrolls, which were definitely assigned to freight, passenger and mixed, by the superintendent in charge making the assignment at the point of origin who handles those particular accounts and makes the ordinary distribution on our payroll.

And where can we get that distribution to see what method he used?

By Mr. Pettijohn, interrupting:

Q. You mean by that, do you (Tes. p. 1103) not Mr. Lamb that the superintendent's office assigns these expenses of trainmen and enginemen to districts according to the territory in which the crews operate?

A. To the actual run of the crews. It is actual allocation; it is not any arbitrary apportionment. The only distribution would be in connection with mixed trains. The amounts chargeable were drawn from the payrolls which were definitely assigned to freight, passenger and mixed. [fol. 1088]. For the month of September—I happen to have that figure here—1928, $7,149.38 was charged to mixed. This was distributed to passenger and freight on the basis of the percentage of car miles in mixed trains, passenger and freight, which assigned 76.93 per cent to freight. This figure was added to the direct freight expenses to produce the amount chargeable to freight. Account 394—Fuel for Train Locomotives. Vouchers were examined and from the distribution thereon each voucher was set up showing the charge to freight, passenger, common or mixed. Payrolls were examined and the amount directly distributed thereon to freight, passenger, common and mixed was set down. Shop expenses were distributed on the accepted basis as prescribed by the classification of accounts, being apportioned to the various accounts affected on the relative proportion which the total amount of charges to "shop expenses bears to the total of the directly distributed labor."

By Mr. Pettijohn:

Q. On that, Mr. Lamb, does that mean that (Tes. p. 1104) the total shop expenses for instance at St. Augustine would be the shop expenses thrown into the third division expenses?

A. Your classification of accounts provide for the assignment or distribution of shop expenses which is made on the basis that the shop expenses bear to the total of the directly distributed labor.

Mr. Cotterill: But, Mr. Lamb, you are speaking of the assignment as between freight, passenger and mixed. Mr. Pettijohn's question is, did you charge the whole of the shop expense at St. Augustine to the operation of the third division.

By Mr. Pettijohn:

Q. Mr. Lamb, are you not still discussing fuel for locomotives?

A. Yes. I am only discussing it in so far as shop ex- [fol. 1089] penses are concerned, that portion of the work done by the shops is properly chargeable to fuel for locomotives.

Q. And, your fuel for locomotives is a suspense account, from which you make your distribution to primary expenses on the basis of consumption? (Question also read by the reporter.)

Mr. Alston: Your Honor, I think we had better let the examination take its orderly course. The interruptions are coming pretty frequently.

Exam. Hoy: It is necessary to explain the exhibits. It (Tes. p. 1105) is not necessarily in the nature of cross-examination. I think it is proper here as we go along so that everybody will understand the exhibits.

A. The actual issues to the third division were definitely made, and as I stated the shop expenses were distributed to that third division.

Q. In order to shorten it, Mr. Lamb, is it not correct to say that all of the expenses from every source, including the purchase of fuel, is first charged to the fuel account and from the fuel account to determine the average cost per ton of the fuel and that the issue of fuel to the respective classes of service are then charged, and your material supply accounts credited with the number of tons at the average price according to the class of service in which the fuel was used.

A. I think that is substantially correct, Mr. Pettijohn. The purchasing department definitely shows the amount of issues to freight, passenger, common and mixed, and the amount charged to mixed service is distributed on the basis of car mile in mixed trains, which is the accepted basis.

Q. And, the basis of the issues are the engineer's tickets as to different coal chutes?

[fol. 1090] A. Certainly. Fuel account was analyzed and the amounts charged to freight, passenger, common and mixed ascertained, to which is added the store expenses

distributed on basis of (Tes. p. 1106) issues to the respective accounts. The amount chargeable to mixed was distributed on the percentage of car miles in mixed trains and the amount charged to common was distributed to passenger and freight on direct assignment of all other charges. I might say there that the amount charged to common is practically nil.

Q. In order that there may be no further dispute in connection with that Mr. Lamb, take Thomasville, Georgia, the same cost per ton on coal issued to engines operating in the third division is applied to engines operating in the second division, for such coal as they receive at Thomasville?

A. I think you are correct on that, because we have to use on certain parts of the system the average cost at that point.

By Mr. Alston:

Q. Now Mr. Lamb, on an engine operating in the third division receiving coal at Thomasville, how do you charge——

A. It is charged out at the average price at that point, at Thomasville. Account 397—Water for Train Locomotives, is all charged to common and is distributed to passenger and (Tes. p. 1107) freight on the basis of the distribution to passenger and freight of Account 394—Fuel for Train Locomotives. Account 398—Lubricants for Train Locomotives, was practically all directly assigned to freight and passenger from the vouchers and materials and supplies. The amounts chargeable to mixed trains were apportioned on the basis of car miles in mixed trains. The amount charged common was apportioned on the basis of the direct assignment to passenger and freight. Account 399—Other [fol. 1091] Supplies for Train Locomotives. Vouchers and payrolls were examined and the distribution to passenger, freight, common and mixed listed, and a proportion of shop expenses added. As previously explained, the direct issues of materials and supplies assigned certain amounts to freight and passenger and small amounts to common and mixed. To each of these accounts a proportion of store expenses was added and the amounts chargeable to mixed service apportioned as between passenger and freight on the basis of car miles in mixed trains and the amount charged to common was apportioned on the basis of the direct assignment to passenger and freight. Account 400—

Engine-house expenses—Road. Vouchers were analyzed and the amounts set down separately for those chargeable to freight, passenger, common and mixed. Payrolls were examined and the amounts charged thereon to the respective services were set down. The figures as distributed direct from the payrolls were originally distributed as (Tes. p. 1108) between freight, passenger and mixed on the basis of engines handled in and out for the respective services. A proportion of shop expenses was added as prescribed by the classification of operating expenses. Material and supplies issues as directly charged to freight, passenger and common were set down and to each of these classes of service was added a proportion of store expenses on the basis of issues. Bills collectible as representing services rendered other companies was credited to common and the net amount of the common expenses assigned to freight and passenger on the basis of direct assignments to these respective services.

Account 401—Trainmen-Road. Charges to this account were drawn direct from the payrolls where absolute dis- [fol. 1092] tribution is made to freight, passenger and mixed. The amount charged to mixed was assigned to freight and passenger on the basis of car miles handled in mixed trains, which is the generally accepted basis for assigning mixed expenses. Account 402—Train Supplies and Expenses. Vouchers and pay-rolls were examined and charges set out to freight, passenger, common and mixed. Payrolls were also examined and the amounts charged to freight, passenger and mixed accumulated and a proportion of shop expenses was added. Issues for materials and supplies direct to the freight and passenger services and common were accumulated and store expenses added. Bills collectible as representing supplies furnished (Tes. p. 1109) other roads were credited direct to the respective accounts. The expenses chargeable to mixed service were distributed on the basis of car miles in mixed trains, and common expenses on direct assignment. This procedure was followed for each of the months of September 1, 1928, to June 30, 1929, both inclusive, and the totals chargeable to each account accumulated.

By M. Pettijohn:

Q. With respect to your putting supplies assessed will you please explain how you make your separation, freight

and passenger. How did you make your assessment or assignment train supplies and expenses to operations on the third district?

A. I definitely determined from the purchasing agent the amount supplied to the third division.

Q. In other words if it was an issue or purchase that was made and sent to a point on the third division for application, the train supplies would be respectively assigned?

A. If used on the third division.

[fol. 1093] Q. Let us take the matter of ice. You ice a car in Florida for transportation northbound, if the ice purchase was made in Florida, then the entire expense of that ice is assigned to the third division?

A. Frankly I am not definitely sure about how the item of ice is handled there.

Q. Well, how about oil for the boxes, journals? (Tes. p. 1110.)

A. Well, oil naturally is that if issued on the third division it is applied on the third division for use wherever the car or train may run; just as applied on other divisons if coming into Florida.

Q. Then, the answer to train supplies and expenses is that the allocation has been made where the supplies have been furnished and where the expense has been incurred without regard to the benefits to be received from this expense?

A. Train supplies and expenses usually follow the movement of the train, and if a train is confined to the third division which is entirely in Florida, it naturally follows that those expenses are used up in the State of Florida.

Q. Can you give us a separation of the main supplies and expenses which apply to a train as distinguished from that which applies to a car?

A. No. I get the expenses chargeable to Account 402, ordinary train supplies and expenses, whatever goes into that account naturally is thrown in there without regard to the individual car or locomotive. I stated that I had made these calculations on two bases. The exhibit which I identified as Exhibit No. 86 deals with the average mileage, to-[fol. 1094] wit, 81.36 on a gross ton mileage basis. I have dealt with the same mileage on a car mileage basis. (Tes. p. 1111.) I will identify the exhibit as 87, as part of my testimony which is similar to exhibit 86, excepting that 87

is based on the cost per loaded and empty car mile while exhibit 86 is on the gross ton miles. The out-of-pocket expenses per loaded and empty car mile for the third division was 2.95176 cents. I used the same expenses. I gave the empty and loaded car miles this morning in the record. I used 69 miles or whatever it was. Using the 35.027 per cent in column (a) we get the cost per loaded and empty car mile of 8.4271 cents. The line 4 shows the total car mile as 16,272; multiplying this mileage by the cost of 8.4271 gives us as the operating expense haulage $13.74. The revenue per car was $15.12 which leaves a net of $1.38 as between the revenues and expenses. (Tes. p. 1112.) Applying the 3 per cent to this figure assigns 4 cents for income taxes; applying the 15.39 per cent to the $13.74 operating expenses assigns for Florida taxes 2.12 cents, making the total as shown by line 10 for operating expenses and taxes $15.90, compared with the $15.12 revenue under the so-called Cummer scale. Line 11 shows 5¾ per cent return on investment $4.53, making the total cost $20.43. In column (b) using the total operating expenses, excluding hire of equipment, and by dividing the 2.951 cents shown on line 5 the out-of-pocket expenses per loaded and empty car mile by 23.5492, the relation to the total operating expenses, freight, we produce a cost on line 6 of 12.5344 cents; multiplying this cost by 162.72 miles gives $20.43 as the operating expenses. There is no net as the revenue is only $15.12, there-
[fol. 1095] fore no income taxes are assigned, but multiplying the $20.43 by 15.395 per cent we assign $3.14 for taxes, as shown by line 9. The sum of the taxes and expenses as shown by line 10 is $23.57. 5¾ per cent return on investment assigns $6.74, making the total cost including return on investment of $30.31. Return on investment is computed upon the system and not upon the Florida investment.

Q. There is one thing in one of your exhibits back here, you show in 85, and you state there that was page 312, schedule 350, of the Annual Report, and further on in your testimony (Tes. p. 1113) you stated that these were taxes paid. You mean that that is the accrued taxes do you not?

A. Well, the taxes paid in Florida are adjusted to the accrual of the six million two hundred forty thousand shown on line 50 is the grand total of accrual of which there is paid in Florida the $2,115,260.76. I mean accrued for Florida and my recollection is that practically all of

that was paid before the close of the year. That is all property taxes. Now, I have not in exhibit 85 included in the Forida taxes any of the miscellaneous items shown from line 9 to 16. That represents taxes paid on fixtures and furniture and outside agencies, strictly speaking a part of which should be assigned to Florida because it is system operation and Florida gets the benefit the same as any other part of the system, and I have not included any of that in my figures. As to whether I have made any investigation of these Florida taxes that have accrued and determined whether or not there was not a compromise on the Florida accrual I am not advised as to what possibly accrued before I came with the Coast Line; I am not [fol. 1096] familiar with that.

By Mr. Pettijohn:

Q. My understanding is that the Coast Line and Seaboard compromised their tax accruals with the State of Florida (Tes. p. 1114).

A. I am not advised on that; I don't know.

Q. Will you look that up if we have an adjourned hearing and be prepared to state for the year 1929.

A. For the year 1929. In exhibit 85, in which I dealt with taxes, allocating of taxes, I have adopted on exhibit 85 the same basis used by Mr. Pettijohn in revising the exhibits filed by Mr. Lowell White in the previous hearing. Exhibits will be prepared for other mileages illustrating the cost under the Cummer scale and these exhibits will be made on the same basis as the two exhibits 86 and 87. The taxes will be allocated on the basis of 85 (Tes. p. 1115). In the sheets that were recalled this morning it is true that calculations were made for various mileages on the gross ton mile method; then I went back over those same various mileages and presented another theory based upon the loaded and empty car miles. It is my purpose to introduce later another set of exhibits dealing with the loaded car and empty car mileage theory of proportion. I presented one exhibit, the last exhibit filed was on the car mile basis. There will be some other exhibits presented on the basis of exhibit 86, and some other exhibits presented on the basis of 87, and the only difference will be the mileage and the revenue (Tes. p. 1116) and of course that affects the revenue and the actual figures but the basis will be the same.

[fol. 1097] By Mr. Alston:

Q. Mr. Lamb from your survey of the application of the Cummer Scale of rates, and from your evperience as an accountant as you have detailed, please say whether or not in your opinion the Cummer scale of rates pays the cost—affords a revenue which is equal to the cost of doing the business covered thereby?

A. No, as shown by the exhibits filed in practically every case the cost, including a reasonable return on investment, exceeds the revenue derived, and in some instances the operating expenses exceed the revenue, without including any taxes or return on investment.

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J. W. PERRIN, recalled as a witness and being previously sworn, testified further as follows:

Direct examination:

I was asked yesterday by Mr. Cotterill to produce figures showing the effect upon the total revenues of the Atlantic Coast Line system for the (Tes. p. 1117) interstate basis which the Commission prescribed for application between Florida and Georgia, if it should be applied over the system as a whole both state and interstate. I have made that compilation. Preliminary to stating the results of the calculation I made, in accordance with Mr. Cotterills's request, I want to make a correction in the figures that I put into the record yesterday as to the losses sustained if the Cummer scale should be applied uniformly throughout the system. The figures presented yesterday were based upon the assumption that the present scale of rates in South Carolina was in effect throughout the period. However, the present rates in South Carolina did not become effec-[fol. 1098] tive until July 21, 1930; and if for the period of approximately 19 months these figures should be revised to reflect the application of the interstate standard scale in South Carolina, which was actually in effect during that period it would add approximately $10,000 to the amount of losses that would be sustained under the Cummer scale. And, the actual total would be $675,381.21. That figure should be substituted (Tes. p. 1118) for the figure of six hundred some odd thousand that I gave yesterday. Now, as to Mr. Cotterill's request which was on

the same principle, to apply the interstate scale, and indicate what effect on the revenues on the system would result. The result of course would show no change in Virginia, in Florid in Alabama, and interstate it would increase the revenues in North Carolina $65,427.24; it would increase the revenues in South Carolina $7,145.14, and it would increase the revenues in Georgia, $14,567.52, a total increase of $87,229.90. Stating it in percentages the amount of increase if the interstate scale should apply over the system would be 5.9 per cent while under the Cummer scale the amount of reduction would be equivalent to 45.5 per cent. The exhibit No. 61 of course was prepared for the purpose of showing the effect upon the revenues that would result from the application of the Cummer scale. It had no reference (Tes. p. 1119) at all to the interstate feature, it was not prepared with any thought of the interstate rates. Throughout the whole preparation we never gave a thought to whether there was any log movement from Florida to Georgia; it did not enter into my mind until the question came up yesterday, that we might have included a compilation of the movement from Florida to Georgia. There was a force of clerks engaged in the [fol. 1099] preparation of those statistics in exhibit 61 from March 2nd until April 15th of this year. The whole purpose of it was to show what tonnage had moved in Florida intrastate during the period subsequent to February 9, 1929, to show what effect from a revenue standpoint would be of the application upon that tonnage of the so-called Cummer scale on the one hand or the interstate basis on the other.

Mr. Gwathmey: Now Mr. Examiner, we were requested on yesterday to compile certain information and at this time I would like to make a statement in regard to our position. So far as the movement of logs from Florida into Georgia during the period since February 9, 1929 is concerned, we are prepared to state for the record that based upon such investigations as we have been able to make there has been no such movement. Of course, there may have been an occasional car. I will ask counsel for the intervenors to say whether or not (Tes. p. 1120) in view of that statement they desire to press their request that we check all way-bills for the purpose of getting the information.

Mr. Adair: Your Honor, I think that statement is entirely satisfactory to us. We desire to put no more work upon our adversary that they are really able to do.

Mr. Norman: That is satisfactory to us.

Mr. Gwathmey: We were requested also, Mr. Examiner, to file for the three year period, 1927 and 1928, a statement which will show for that period information similar to the data contained in Mr. Perrin's exhibit No. 61. I would like to ask counsel for the intervenors whether in view of the data which has once been submitted in the case they now desire to press that request.

[fol. 1100] Mr. Norman: I don't know to what you have reference.

Mr. Gwathmey: I am referring particularly to exhibit No. 80.

Then Mr. Examiner, I think it only proper that counsel should state the purposes of the request.

Mr. Alston: What they expect to prove.

Mr. Norman: I want to point out on this exhibit No. 80 that they very carefully refrained from giving the information I want. They give under system revenue some log traffic, but when they come to the columns under Florida, that column is omitted. (Tes. p. 1121)

Mr. Gwathmey: You mean the revenue?

Mr. Norman: The revenue. They have only given us the revenue from log traffic since February 9, 1929; what we want is the revenue for the previous years so that the effect of the increase in the rates on gross revenues may appear. Now, they have given us no much information. I don't think exhibit 80 adds anything to that particular question.

Mr. Gwathmey: I understand that you desire now to press your request.

Mr. Norman: Yes.

Mr. Adair: Mr. Gwathmey, may I say a word there. We would also like to have that information with respect to the year 1926, which is the year in which this controversy was commenced.

Mr. Gwathmey: Let us get the request clear. Do I understand now that it covers three years, 1926, 1927 and 1928?

The Witness: Yes, sir.

[fol. 1101] Mr. Alston: I think, Mr. Examiner, that our friends ought to be asked to state what they expect to prove.

Exam. Hoy: They probably will if you give them a little more time.

Mr. Norman: We expect that to show that instead of the increase in the rates removing the burden from interstate commerce it has cost one on interstate commerce, and the Supreme Court in its decision says—— (Tes. p. 1122)

Mr. Alston: Don't argue that.

Exam. Hoy: Let us not argue it, Mr. Norman. Just state in response to Mr. Alston's question the purpose for which you want the information.

Mr. Norman: I have stated that.

Exam. Hoy: Without arguing the question.

Mr. Alston: The statement is too general "put a burden"—— in what way Mr. Norman does it put a burden?

Exam. Hoy: We will not get into an argument on this question.

Mr. Alston: No argument at all but, I would like for him to state in his statement what kind of a burden that is, that he wants to show was put on interstate commerce in this situation.

Mr. Norman: We want to show that the alteration of the interstate rates produced or is likely to produce additional income. This evidence we think will show that it did not produce additional income but on the contrary it caused a loss of income.

Exam. Hoy: Mr. Gwathmey, the request has been made, or as Mr. Norman did, the other gentleman there gave it, request for this information. You asked for a statement [fol. 1102] as to why they wanted it. Now, I think we shall hear from you.

Mr. Gwathmey: If the Examiner please, as Mr. Perrin stated the compilation of his exhibit No. 61 required the time of a force of clerks for a period of over six weeks. The (Tes. p. 1123) compilation of the additional data which has been requested by the intervenors which covers a three year period would obviously necessitate still more work, and a still longer time in which to compile it. We have shown in exhibit No. 80 the tonnage in logs intrastate in Florida by cars, the number of tons for the entire period 1926 to 1930, inclusive. That exhibit on its face shows the

extent to which there has been a decline in the tonnage, particularly during the years 1929 and 1930, with the very marked decline in 1930 and I respectfully submit that the information which has been submitted by the defendant is sufficient for the purposes of the case, that the amount of time and labor which would be necessitated in complying with this request by the intervenors is so great as not to justify a requirement that the defendant should go to that expense. In addition, having in mind the statement of counsel for the intervenors as to the purposes of this information, I call your Honor's attention to the fact that there are present now and have been present throughout this hearing representatives of the larger lumber mills in this territory, including particularly the representatives of the Brooks-Scanlon Company and Putnam Company, both of whom as I understand have moved their mill from Eastport and Milldale here adjacent to Jacksonville to other points in the State. Those gentlemen know certainly what their tonnage was prior to this change in the rates and [fol. 1103] they know what it is now. They know how much business (Tes. p. 1124) that formerly moved to Jacksonville and does not move now. I have no doubt they expect to offer it at this hearing, and with all of that information I submit that the additional data requested by the intervenor is unnecessary. We are prepared to go further, Mr. Examiner, in referring to exhibit No. 80. We will admit that the gross revenue in 1926 under the application of the Cummer scale, 1,214,361 tons of lumber shown on that exhibit in column (a) would exceed the gross revenue in 1930 under the application of the interstate basis on the 272,150 tons shown for the latter year.

Mr. Norman: Now, Mr. Examiner, if the defendant won't furnish this information which we think the Interstate Commerce Commission is entitled to have in determining the very serious question, and information which only the defendant has, I would like to ask, without waiving any part of the request as originally made, if the defendants will furnish the gross revenue from log traffic for the years 1926, 1927 and 1928, without going into the detail with which they have shown the facts as for 1929 and 1930.

Mr. Gwathmey: You are speaking as to intrastate?

Mr. Norman: Intrastate log traffic.

Mr. Gwathmey: I think Mr. Lamb explained in filing his exhibit No. 80 that that separation had not been made in the accounts of the company. I think they are wrong about that, (Tes. p. 1125) I would like an opportunity to confer with Mr. Lamb.

Mr. Adair: Your Honor, speaking for the unfortunates that I represent I should like to insist upon the gross reve-
[fol. 1104] nue from the log traffic in Florida for 1926, 1927 and 1928, notwithstanding the details which have been given here with respect to the number of cars and number of tons. I want to point out to your Honor that a lot of this movement was discontinued during this period of the time state rates was long haul train load movements that run up the general revenue from the logs in Florida far out of proportion to the number of actual cars hauled, so as that it does not necessarily follow that the reduction in number of tons and number of cars shows at all clearly what the total reduction in revenue is.

Exam. Hoy: I think we had better find out first from Mr. Gwathmey after consulting with Mr. Lamb whether they can not furnish it, and if they will furnish what Mr. Norman and you have just asked for, then we will continue from there.

Mr. Alston: Mr. Examiner, Mr. Lamb states that the revenue (Tes. p. 1126) on this log business is not segregated by states and that it would take a very considerable time to get the evidence and that that can not be furnished at this hearing or for sometime thereafter.

I would like to say this, I do not think that this question of revenue is relevant.

Exam. Hoy: Well, I don't think we need to go into that. The question here before you is the request made for certain additional information.

Mr. Alston: We haven't got, and can not get it with any degree of reasonable effort.

Exam. Hoy: Am I to understand then that you are willing to furnish it at some later time or that you are unwilling to furnish it? I don't know just how to interpret your answer myself.

[fol. 1105] Mr. Alston: I am undertaking to say we look upon the evidence as unimportant and that the purposes—and we believe that the purposes of our opponents are served by exhibit No. 80. We prefer very much not to be

put to the expense of getting this evidence, as dollars and cents revenue for the State of Florida for the period mentioned, and do not say we will not do it of course, we hope the Commission will not require us to do it for the reasons I have stated. We think that to quite a degree the information is within the power of the shippers who are represented here. (Tes. p. 1127).

Mr. Norman: First, now as to information furnished on exhibit 80.

Exam. Hoy: Mr. Norman I don't think it is necessary to debate it back and forth any more. As I understand Mr. Alston's reply—you want it, and other intervenors want it, and Mr. Alston does not show any disposition to furnish it. I think after the hearing is over if you still think you should have that information, why then you will take that up with the Commission. I do not think there is any need of debating it any more here.

Mr. Norman: I would like to ask the defendant to explain the discrepancy in the figures on exhibit 80 and exhibit 61. On exhibit 80 they show the years 1929 and 1930——

Exam. Hoy: Well, just should we not wait and get one of the witnesses—there was two different witnesses. One introduced 61 and one introduced 80. (Tes. p. 1128)

Cross-examination.

By Mr. Norman:

Q. It appears on exhibit 61 filed by you that there moved in the State of Florida for the period from February 9, 1929, to January 31, 1931, 18,602 cars. Now, it appears [fol. 1106] from exhibit 80 filed by Mr. Lamb that for the calendar years 1929 and 1930 there moved 22,583 cars or about 4,000 more cars than is shown on your exhibit. The period is slightly different but the one includes only 8 days more than the other. What is the explanation of that difference?

A. This covers 23 months and I imagine his covers the full 24 months.

Q. Yours covers 23 months and 22 days?

A. Well it does, up to January 31st.

Q. There are only 8 days difference in the amount of time covered and 4,000 difference in the number of cars, or about 22 per cent more cars on one side than the other?

A. My exhibit No. 61 as it states shows the movement of long length logs. I have the statistics of the movement of the short length logs for the same period and the total movement of short length logs in that period was approximately 4,000 cars. The short length logs were evidently included in Mr. (Tes. p. 1129) Lamb's exhibit. I imagine that is true. As to whether I have the revenue on those short length logs, I don't think so inasmuch as we did not—there was no revenue question involved when we assembled the volume of movement. I don't think we even referred to it (Tes. p. 1130).

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F. B. Langley, called as a witness, being duly sworn, testified as follows:

Direct examination:

My official connection with the Atlantic Coast Line Railroad is Superintendent of Transportation, of the third division. I have been with the Atlantic Coast Line office since 1907 and during that time I have been located in Florida since 1910 and in North Carolina three years. (Tes. [fol. 1107] p. 1131). These cars which haul logs return empty. I mean hauls in Florida. That is almost without exception. I would say 98 per cent. That is true of the individual cars as well as train loading of cars. As to my familiarity with the timber situation on the Atlantic Coast Line and as to whether or not there are very large tracts of timber yet uncut in Florida I am not in position to say where this timber is located except in two or three tracts. We have large tracts of timber in the western side, which we consider the Perry and Cross City territory and also in the Everglades territory, which is known as the "Big cypress". That is in the southern part of the state. As to what counties are they I think considerable timber is down in Dade County,—not Dade County, Collier County, and on the other side, (Tes. p. 1132) Taylor and Dixie. There are other tracts of timber but I am not entirely familiar with the location.

Cross-examination:

As to what part of our Florida trackage lies outside of the third division, we have a line from High Springs up

to the State line which is up north of Live Oak, and then the line from Jacksonville to through Hilliard to the Georgia state line. I am not familiar with just the exact mileage, but it does not amount to just a great deal. Those lines are not in the third division. But all the rest of the trackage in Florida is in the third division. Now there are about 7 miles outside of Thomasville that is not on this, that is in third division but there is nothing in there. There is only one station in Georgia, and that is Metcalf, and that has practically no business. Hines and Palatka [fol. 1108] Florida are in my division. (Tes. p. 1133). And the trackage in between those points is in my division. At Wilson we operate a log train movement there for the Wilson Cypress Company every other day in solid trainloads. As to what other service we perform in connection with that besides hitching a caboose onto one end and an engine onto the other and taking it to Palatka, that is all the service we perform at Hines, we make delivery of empty cars to the Wilson Cypress Lumber Company at Hines and they deliver the same to us at the same point made up. They are carried to Palatka and at that point the cars of course are handled by switch engines and weighed at Palatka and delivered to the Wilson Cypress Company's plant in solid trains. Of course they have to be cut apart to be weighed. I am sure that that is not based on estimated weights with occasional checks. (Tes. p. 1134). The cars are weighed in Palatka, all of them, each day, and that string of cars that comes in loaded is delivered back to us at Palatka and we take them back down to Hines. Our switch engine takes care of the work at Palatka. As to whether we maintain a special switch engine for that purpose, I doubt if we could cut it off if that business was discontinued. Wilson Cypress Company equips those cars with the special log equipment, and pay for that equipment. It is special logging equipment, that means stanchions. They pay for repairs—any car that is damaged while on their logging railroad, that is all. They pay a part of the inspection costs, 50 per cent of the inspection I believe. Hines, I am not positive but I believe that is the figure. (Tes. p. 1135). I am familiar with this movement. As to the actual out of pocket cost of transporting those log trains from Hines to Palatka and return, I have not those figures. In the crew there is the

[fol. 1109] engineer, fireman, conductor, flagman and one trainman. Five in all. It takes about eight hours to make the trip each way. That means from the time the crew is called until they are relieved at the other end. It is usually night day movement with the empty train and day and night with the loaded train. We try to handle the loaded train in the day time if we possibly can on account of the danger involved in handling it. (Tes. p. 1136).

Mr. Adair: Mr. Langley is it possible for you to get up within a short time the cost of your wages for your train crew, and the amount of fuel that is used by you on this trip for a period of a month; those figures are in your office are they not?

A. No, sir, not the figures of the fuel and engine supplies they are not. That is not in my office. The wages we could get that up possibly within a couple of days. The wages only. We do not keep the other figures. That information with respect to fuel is available. I could get it for you within a reasonable length of time.

Q. Also the train expenses, if any, in addition, or other expenses in connection with the operation of that train. Out-of-pocket expenses in connection with the operation of the train. (Tes. p. 1137).

A. As to whether this movement is an economical movement or expensive movement from the standpoint of the railroad, well, a solid train movement is less expensive than just a few cars handled in local freight. It is regular every other day and empties go back in solid trains. As to whether I recall a conversation that I had with Mr. C. R. MacPherson, President of the Wilson Cypress Company on or about May 7, 1929 with respect to this movement, I don't remember what date. I had a conversation with him [fol. 1110] sometime the first part of the year, I don't remember just when it was. I don't recall as far back as November 1929. I don't recall whether I stated then at or about that time to Mr. McPherson that my division that that particular division obtained a larger net revenue from logs than citrus fruit, vegetables, mellons (Tes. p. 1138) etc., and whether it was the next largest tonnage. In fact I am sure that no such remarks was made because that is not the situation.